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PALEY'S

# MORAL AND POLITICAL PHILOSOPHY.

AS CONDENSED  
*Prabhu*  
BY A. J. VALPY, M.A.

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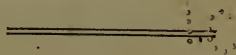
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TO WHICH ARE ADDED  
NOTES FROM POPULAR AUTHORS;

EMBRACING  
PRESENT OPINIONS IN ETHICAL SCIENCE, AND  
AN EXPOSITION OF OUR OWN POLITICAL  
INSTITUTIONS.

THE WHOLE  
CAREFULLY ADAPTED TO SCHOOLS OF BOTH SEXES,  
AND ACCOMPANIED WITH  
QUESTIONS FOR EXAMINATION.

BY RICHARD W. GREEN,  
AUTHOR OF INDUCTIVE EXERCISES IN ENGLISH GRAMMAR.



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"THE only work upon moral philosophy which has extensive circulation, and which is level to the comprehension of common readers, is the Moral Philosophy of Dr. Paley. This work, like all others of the same author, is remarkable for its clearness, and the apposite and natural manner in which it illustrates principles. But it cannot be recommended without a warning to the reader to beware of being misled by the principle upon which, as a foundation, the system of Dr. Paley is built. This is the principle of expediency. Dr. Paley says, 'whatever is expedient is right.' But, then, it 'must be expedient on the whole, at the long run, in all its effects, collateral and remote, as well as in those which are immediate and direct.' Now, this is undoubtedly true, to a being capable of estimating all effects, direct and indirect, collateral and remote, through all time, and upon all beings,—and to such a one alone. No person can safely act upon this principle, in questions of right and wrong, but one who can take into view the boundless future. Now, it need not be proved that none but God has this perfect foreknowledge; no one else can, therefore, safely act upon the principle of expediency.

"With this exception and one or two others, the morality of Dr. Paley is the morality of the Gospel; and he constantly enforces his principles by quotations from thence, and has been guided throughout by light borrowed from the Gospel."

*Emerson's Appendix to Sullivan's Political Class-Book.*

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ENTERED according to the Act of Congress, in the year 1835, by  
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## PREFACE OF THE AMERICAN EDITOR.

PALEY'S Moral Philosophy is a standard book. It is found in every gentleman's library, and is made use of as a text-book in many of our schools and colleges. It is a treatise above all others, the best adapted to general use ; both on account of its clearness of method and aptness of illustration, and also because it contains a code of ethics, more universal in its application than any other. In the language of an English reviewer, "It is a masterly and inimitable work.—He had many points of resemblance to Socrates : the philosophy of both was common sense, and their study human nature."

But it has undoubtedly its defects ; and such defects as youth should be apprised of when they sit down to store their minds with its contents. The present editor has long regretted that so much error should accompany so good a book ; and has wished to see an edition of it published for schools without the objectionable matter.

With these views, he gladly availed himself of the opportunity that seemed to be offered by the publication in London of a condensed edition by A. J. Valpy, M. A. ; stating in its advertisement, that the original work was condensed into about one half its bulk, "where not only are all the arguments of Paley preserved in their native force, but even his very words, as often as they seem to convey his ideas in the best, because most concise manner." Having casually met with this work, he conceived the idea that to this compressed edition there might be added critical notes exposing the errors of Dr.

Paley : and that there still might be retained his own arguments in favor of his opinions.

After this determination, in looking over the work, it was found that the English editor had frequently abridged the original phraseology so much as to destroy its perspicuity, especially for young minds. On this account the American editor has not hesitated to make numerous alterations in the text ; always being careful to make the reading nearer that adopted by Dr. Paley himself.

In order to render the work more proper for a "guide in morals," he has inserted, where it appeared necessary, notes selected from popular authors, which show the present received opinions concerning some important points in ethical science. He has also substituted for the chapter on the British constitution, a series of extracts from American writers, giving a short account of our own political government.

The editor is sensible that it is but an humble business to employ the strictures of other men. But his object was to make the book useful ; and for this purpose, his own opinions would have but little weight in comparison with what may be expected from the writings of popular authors. It may be proper to mention also, that for the sake of adhering to the original design of employing quotations, there are some minor points of objection that have not been treated of. But, as they are of little moment, the loss will hardly be noticed.

For the purpose of adapting the work to the use of schools, the editor has carefully expunged every thing that might offend the eye of delicacy, or suggest in the minds of youth any improper feelings or thoughts. And for the same purpose, he has also furnished a series of questions for examination.

# CONTENTS.

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	Page
Preface of the American Editor.....	3
Author's Preface .....	9

## BOOK I.

### PRELIMINARY CONSIDERATIONS.

CHAP. I. Definition and use of the science.....	17
II. Law of honor.....	18
III. Law of the land.....	18
IV. Law of God.....	19
V. The moral sense.....	21
Culture of the moral faculties.....	34
VI. Human happiness.....	36
VII. Virtue.....	44

## BOOK II.

### MORAL OBLIGATIONS.

CHAP. I. The question, Why is a man obliged ? considered....	50
II. The meaning of the word 'Obligation'.....	51
III. The question, Why am I obliged to keep my word....	52
IV. The will of God.....	53
V. The Divine benevolence.....	54
VI. Utility.....	56
VII. The necessity of general rules.....	58
VIII. On general consequences.....	60
IX. Of right.....	61
X. The division of rights.....	62
XI. The general rights of man.....	65



# CONTENTS.

## BOOK III.

### RELATIVE DUTIES.

#### PART I.—OF RELATIVE DUTIES WHICH ARE DETERMINATE.

	Page
CHAP. I. On property.....	69
II. The use of the institution of property.....	ib.
III. The history of property.....	71
IV. In what the right of property is founded.....	72
V. Promises.....	74
VI. Contracts.....	82
VII. Contracts of sale.....	ib.
VIII. Contracts of hazard.....	84
IX. Contracts of loans of property inconsumable.....	85
X. Contracts of money-lending.....	86
XI. Contracts of labor—service.....	88
XII. Contracts of labor—commissions.....	91
XIII. Contracts of labor—partnership.....	92
XIV. Contracts of labor—offices.....	93
XV. Lies.....	94
XVI. Oaths.....	97
XVII. Oaths in evidence,.....	103
[Oaths of allegiance—Oath against bribery in the elec- tion of members of parliament—Oath against simony Oaths to observe local statutes--and, Subscriptions to articles of religion, are omitted.]	
XVIII. Wills.....	104

#### PART II.—OF RELATIVE DUTIES WHICH ARE INDETERMINATE.

CHAP. I. Charity.....	109
II. On treatment of dependants.....	ib.
III. Slavery.....	110
IV. Professional assistance.....	111
V. Pecuniary bounty.....	112
VI. Resentment.....	117
VII. Anger.....	118
VIII. Revenge.....	119
IX. Duelling.....	121

# CONTENTS.

7

Page

CHAP. X. Litigation.....	122
XI. Gratitude.....	124
XII. Slander.....	125

## PART III.—RELATIVE DUTIES WHICH RESULT FROM THE CONSTITUTION OF THE SEXES.

CHAP. I. Use of marriage institutions.....	127
II. Polygamy.....	129
III. Divorce.....	130
IV. Marriage.....	134
V. Duty of parents.....	136
VI. Rights of parents.....	142
VII. Duty of children.....	143

## BOOK IV.

### DUTIES TO OURSELVES.

CHAP. I. Rights of self-defence.....	146
II. Drunkenness.....	147
III. Suicide.....	150

## BOOK V.

### DUTIES TOWARDS GOD.

CHAP. I. Division of these duties.....	154
II. Duty and efficacy of prayer, as seen by the light of nature.....	ib.
III. Duty and efficacy of prayer, as represented in Scripture	157
IV. Private prayer, family prayer, and public worship.....	159
V. Forms of prayer in public worship.....	162
VI. Use of sabbatical institutions.....	166
VII. Scripture account of sabbatical institutions.....	168
VIII. By what acts of commission or omission the sabbath is violated.....	177
IX. Of reverencing the Deity.....	179

## BOOK VI.

### ELEMENTS OF POLITICAL KNOWLEDGE.

CHAP. I. Origin of civil government.....	184
II. How subjection to civil government is obtained.....	186

CHAP. III. Duty of submission to civil government.....	189
IV. Duty of civil obedience, as stated in the Christian Scriptures.....	197
V. Civil liberty.....	201
VI. Different forms of government.....	203
VII. First principles of political constitutions.....	211
VIII. Organization of the legislative power.....	220
IX. Organization of the executive power.....	223
X. Powers and restrictions of the legislature.....	230
XI. Municipal law.....	243
XII. Organization of the judicial power.....	248
XIII. Administration of justice.....	256
XIV. Crimes and punishments.....	265
XV. Religious establishments and toleration.....	276
XVI. War and military establishments.....	277

## THE

# AUTHOR'S PREFACE.

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IN the treatises that I have met with on the subject of morals, I appear to myself to have remarked the following imperfections;—either that the principle was erroneous, or that it was indistinctly explained, or that the rules deduced from it were not sufficiently adapted to real life and to actual situations. The writings of Grotius, and the larger work of Puffendorff, are of too forensic a cast, too much mixed up with the civil law and with the jurisprudence of Germany, to answer precisely the design of a system of ethics,—the direction of private consciences in the general conduct of human life. Perhaps, indeed, they are not to be regarded as institutes of morality calculated to instruct an individual in his duty, so much as a species of law books and law authorities, suited to the practice of those courts of justice, whose decisions are regulated by general principles of natural equity, in conjunction with the maxims of the Roman code; of which kind, I understand, there are many on the continent. To which may be added, concerning both these authors, that they are more occupied in describing the rights and usages of independent communities, than is necessary in a work which professes not to adjust the correspondence of nations, but to delineate the offices of domestic life. The profusion also of classical quotations, with which many of their pages abound, seems to me a fault from which it will not be easy to excuse them. If these extracts be intended as decorations of style, the composition is overloaded with ornaments of one kind. To any thing more than ornament they can make no claim. To propose them as serious arguments, gravely to attempt to establish or fortify a moral duty by the testimony of a Greek or Roman poet, is to trifle with the attention of the reader, or rather to take it off from all just principles of reasoning in morals.

Of our own writers in this branch of philosophy, I find none that I think perfectly free from the three objections which I have stated. There is likewise a fourth property observable almost in all of them, namely,

that they divide too much the law of Nature from the precepts of Revelation; some authors industriously declining the mention of Scripture authorities, as belonging to a different province, and others reserving them for a separate volume; which appears to me much the same defect as if a commentator on the laws of England should content himself with stating on each head the common law of the land, without taking any notice of acts of parliament; or should choose to give his readers the common law in one book, and the statute law in another. ‘When the obligations of morality are taught,’ says a pious and celebrated writer, ‘let the sanctions of Christianity never be forgotten: by which it will be shown that they give strength and lustre to each other: religion will appear to be the voice of reason, and morality will be the will of God.’\*

The manner also in which modern writers have treated of subjects of morality is, in my judgment, liable to much exception. It has become of late a fashion to deliver moral institutes in strings or series of detached propositions, without subjoining a continued argument or regular dissertation to any of them. This sententious apophthegmatising style, by crowding propositions and paragraphs too fast on the mind, and by carrying the eye of the reader from subject to subject in too quick a succession, gains not a sufficient hold on the attention, to leave either the memory furnished or the understanding satisfied. However useful a syllabus of topics or a series of propositions may be in the hands of a lecturer, or as a guide to a student, who is supposed to consult other books, or to institute on each subject researches of his own, the method is by no means convenient for ordinary readers; because few readers are such thinkers as to want only a hint to set their thoughts at work on; or such as will pause and tarry at every proposition, till they have traced out its dependency, proof, relation, and consequences, before they permit themselves to step on to another. A respectable writer of this class\* has comprised his doctrine of slavery in the three following propositions:—

‘No one is born a slave; because every one is born with all his original rights.’

‘No one can become a slave; because no one, from being a person, can, in the language of the Roman law, become a thing, or a subject of property.’

‘The supposed property of the master in the slave, therefore, is matter of usurpation, not of right.’

It may be possible to deduce from these few adages, such a theory of the primitive rights of human nature, as will evince the illegality of

\* Preface to ‘The Preceptor,’ by Dr. Johnson.

† Dr. Ferguson, author of ‘Institutes of Moral Philosophy,’ 1767.

slavery ; but surely an author requires too much of his reader, when he expects him to make these deductions for himself; or to supply, perhaps, from some remote chapter of the same treatise, the several proofs and explanations which are necessary to render the meaning and truth of these assertions intelligible.

There is a fault, the opposite of this, which some moralists who have adopted a different, and I think a better plan of composition, have not always been careful to avoid; namely, the dwelling on verbal and elementary distinctions, with a labour and prolixity proportioned much more to the subtlety of the question, than to its value and importance in the prosecution of the subject. A writer on the law of nature,\* whose explications in every part of philosophy, though always diffuse, are often very successful, has employed three long sections in endeavouring to prove that "permissions are not laws." The discussion of this controversy, however essential it might be to dialectic precision, was certainly not necessary to the progress of a work designed to describe the duties and obligations of civil life. The reader becomes impatient when he is detained by disquisitions which have no other object than the settling of terms and phrases; and, what is worse, they for whose use such books are chiefly intended, will not be persuaded to read them at all.

I am led to propose these strictures, not by any propensity to depreciate the labours of my predecessors, much less to invite a comparison between the merits of their performances and my own; but solely by the consideration, that when a writer offers a book to the public, on a subject on which the public are already in possession of many others, he is bound by a kind of literary justice to inform his readers, distinctly and specifically, what it is he professes to supply, and what he expects to improve. The imperfections above enumerated are those which I have endeavoured to avoid or remedy. Of the execution the reader must judge; but this was the design.

Concerning the principle of morals, it would be premature to speak; but concerning the manner of unfolding and explaining that principle, I have somewhat which I wish to be remarked. An experience of nine years in the office of a public tutor in one of the universities, and in that department of education to which these chapters relate, afforded me frequent occasions to observe, that in discoursing to young minds on topics of morality, it required much more pains to make them perceive the difficulty than to understand the solution: that, unless the subject was so drawn up to a point as to exhibit the full force of an objection, or the exact place of a doubt, before any explanation was entered on,—in other

\* Dr. Rutherford, author of "Institutes of Natural Law."



words, unless some curiosity was excited before it was attempted to be satisfied, the labour of the teacher was lost. When information was not desired, it was seldom, I found, retained. I have made this observation my guide in the following work : that is, on each occasion I have endeavoured, before I suffered myself to proceed in the disquisition, to put the reader in complete possession of the question ; and to do it in the way that I thought most likely to stir up his own doubts and solicitude about it.

In pursuing the principle of morals through the detail of cases to which it is applicable, I have had in view to accommodate both the choice of the subjects and the manner of handling them, to the situations which arise in the life of an inhabitant of this country in these times. This is the thing that I think to be principally wanting in former treatises ; and perhaps the chief advantage which will be found in mine. I have examined no doubts, I have discussed no obscurities, I have encountered no errors, I have adverted to no controversies, but what I have seen actually to exist. If some of the questions treated of appear to a more instructed reader minute or puerile, I desire such reader to be assured that I have found them occasions of difficulty to young minds ; and what I have observed in young minds, I should expect to meet with in all who approach these subjects for the first time. On each article of human duty, I have combined with the conclusions of reason the declarations of Scripture, when they are to be had, as of co-ordinate authority, and as both terminating in the same sanctions.

In the manner of the work, I have endeavoured so to attemper the opposite plans above animadverted on, as that the reader may not accuse me either of too much haste, or too much delay. I have bestowed on each subject enough of dissertation to give a body and substance to the chapter in which it is treated of, as well as coherence and perspicuity : on the other hand, I have seldom, I hope, exercised the patience of the reader by the length and prolixity of my essays, or disappointed their patience at last by the tenuity and unimportance of the conclusion.

There are two particulars in the following work, for which it may be thought necessary that I should offer some excuse ; the first of which is that I have scarcely ever referred to any other book ; or mentioned the name of the author whose thoughts, and sometimes, possibly, whose very expressions, I have adopted. My method of writing has constantly been this ; to extract what I could from my own stores and my own reflections in the first place ; to put down that, and afterward to consult on each subject such readings as fell in my way ; which order, I am convinced, is the only one whereby any person can keep his thoughts



from sliding into other men's trains. The effect of such a plan on the production itself will be, that, whilst some parts in matter or manner may be new, others will be little else than a repetition of the old. I make no pretensions to perfect originality : I claim to be something more than a mere compiler. Much, no doubt, is borrowed ; but the fact is, that the notes for this work having been prepared for some years, and such things having been from time to time inserted in them as appeared to me worth preserving, and such insertions made commonly without the name of the author from whom they were taken, I should, at this time, have found a difficulty in recovering those names with sufficient exactness to be able to render to every man his own.

Nor, to speak the truth, did it appear to me worth while to repeat the search merely for this purpose. When authorities are relied on, names must be produced : when a discovery has been made in science, it may be unjust to borrow the invention without acknowledging the author. But in an argumentative treatise, and on a subject which allows no place for discovery or invention, properly so called ; and in which all that can belong to a writer is his mode of reasoning, or his judgment of probabilities ; I should have thought it superfluous, had it been easier to me than it was, to have interrupted my text, or crowded my margin with references to every author whose sentiments I have made use of. There is, however, one work to which I owe so much, that it would be ungrateful not to confess the obligation : I mean the writings of the late Abraham Tucker, Esq., part of which were published by himself, and the remainder since his death, under the title of 'The Light of Nature, pursued by Edward Search, Esq.' I have found in this writer more original thinking and observation on the several subjects that he has taken in hand, than in any other, not to say, than in all others put together. His talent also for illustration is unrivalled. But his thoughts are diffused through a long, various, and irregular work. I shall account it no mean praise, if I have been sometimes able to dispose into method, to collect into heads and articles, or to exhibit in more compact and tangible masses, what, in that otherwise excellent performance, is spread over too much surface.

The next circumstance for which some apology may be expected, is the joining of moral and political philosophy together, or the addition of a book of politics to a system of ethics. Against this objection, if it be made one, I might defend myself by the example of many approved writers, who have treated *de officiis homines et civis*, or, as some choose to express it, 'of the rights and obligations of man, in his individual and social capacity,' in the same book. I might allege, also, that the part a member of the commonwealth shall take in political contentions, the

vote he shall give, the counsels he shall approve, the support he shall afford, or the opposition he shall make, to any system of public measures,—is as much a question of personal duty, as much concerns the conscience of the individual who deliberates, as the determination of any doubt which relates to the conduct of private life: that consequently political philosophy is, properly speaking, a continuation of moral philosophy, or rather indeed a part of it, supposing moral philosophy to have for its aim the information of the human conscience in every deliberation that is likely to come before it. I might avail myself of these excuses if I wanted them; but the vindication on which I rely is the following:—In stating the principle of morals, the reader will observe that I have employed some industry in explaining the theory, and showing the necessity of general rules; without the full and constant consideration of which I am persuaded that no system of moral philosophy can be satisfactory or consistent. This foundation being laid, or rather this habit being formed, the discussion of political subjects, to which, more than to almost any other, general rules are applicable, became clear and easy. Whereas, had these topics been assigned to a distinct work, it would have been necessary to have repeated the same rudiments, to have established over again the same principles, as those which we had already exemplified, and rendered familiar to the reader, in the former parts of this. In a word, if there appear to any one too great a diversity, or too wide a distance, between the subjects treated of in the course of the present volume, let him be reminded, that the doctrine of general rules pervades and connects the whole.

It may not be improper, however, to admonish the reader, that, under the name of politics, he is not to look for those occasional controversies which the occurrences of the present day, or any temporary situation of public affairs, may excite; and most of which, if not beneath the dignity, it is beside the purpose of a philosophical institution to advert to. He will perceive that the several disquisitions are framed with a reference to the condition of this country, and of this government: but it seemed to me to belong to the design of a work like the following, not so much to discuss each altercated point with the particularity of a political pamphlet on the subject, as to deliver those universal principles, and to exhibit that mode and train of reasoning in politics, by the due application of which every man might be enabled to attain to just conclusions of his own. I am not ignorant of an objection that has been advanced against all abstract speculations concerning the origin, principle, or limitation of civil authority; namely, that such speculations possess little or no influence on the conduct either of the state or of the subject, of the governors or the

governed ; nor are attended with any useful consequences to either ; that in times of tranquillity they are not wanted, in times of confusion they are never heard. This representation, however, in my opinion, is not just. Times of tumult, it is true, are not the times to learn ; but the choice which men make of their side and party, in the most critical occasions of the commonwealth, may nevertheless depend on the lessons they have received, the books they have read, and the opinions they have imbibed, in seasons of leisure and quietness. Some judicious persons, who were present at Geneva during the troubles which lately convulsed that city, thought they perceived, in the contentions there carrying on, the operation of that political theory, which the writings of Rousseau, and the unbounded esteem in which these writings are holden by his countrymen, had diffused among the people. Throughout the political disputes that have within these few years taken place in Great Britain, in her sister-kingdom, and in her foreign dependencies, it was impossible not to observe, in the language of party, in the resolutions of public meetings, in debate, in conversation, in the general strain of those fugitive and diurnal addresses to the public which such occasions call forth, the prevalency of those ideas of civil authority which are displayed in the works of Mr. Locke. The credit of that great name, the courage and liberality of his principles, the skill and clearness with which his arguments are proposed, no less than the weight of the arguments themselves, have given a reputation and currency to his opinions, of which I am persuaded, in any unsettled state of public affairs, the influence would be felt. As this is not a place for examining the truth or tendency of these doctrines, I would not be understood by what I have said to express any judgment concerning either. I mean only to remark, that such doctrines are not without effect ; and that it is of practical importance to have the principles from which the obligation of social union, and the extent of civil obedience, are derived, rightly explained and well understood. Indeed, as far as I have observed, in political, beyond all other subjects, where men are without some fundamental and scientific principles to resort to, they are liable to have their understandings played on by cant phrases and unmeaning terms, of which every party in every country possesses a vocabulary. We appear astonished when we see the multitude led away by sounds ; but we should remember that, if sounds work miracles, it is always on ignorance. The influence of names is in exact proportion to the want of knowledge.

These are the observations with which I have judged it expedient to prepare the attention of my reader. Concerning the personal motives which engaged me in the following attempt, it is not necessary that I say

much ; the nature of my academical situation, a great deal of leisure since my retirement from it, the recommendation of an honored and excellent friend, the authority of the venerable prelate\* to whom these labours are inscribed, the not perceiving in what way I could employ my time or talents better, and my disapprobation in literary men of that fastidious indolence which sits still because it disdains to do little, were the considerations that directed my thoughts to this design. Nor have I repented of the undertaking. Whatever be the fate or reception of this work, it owes its author nothing ; in sickness and in health I have found in it that which can alone alleviate the one, or give enjoyment to the other,—occupation and engagement.

\* Rt. Rev. Edmund Law, D. D. Lord Bishop of Carlisle.

# MORAL AND POLITICAL PHILOSOPHY.

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## BOOK I.

### PRELIMINARY CONSIDERATIONS.

#### CHAP. I.—DEFINITION AND USE OF THE SCIENCE.

MORAL PHILOSOPHY, or ETHICS, is the science which teaches men their duty, and the reasons for it.

Its use is, to guard against the errors that may arise, either from *defects* in the ordinary rules of life, or from *ignorance* in their application.

The ordinary rules of life are the Laws, 1. of Honor; 2. of the Land; 3. of God.

[Of these, the Laws of God, and the Laws of the Land, may be called *essential* rules of conduct. But the Laws of Honor cannot, with any propriety of language, receive that appellation. “The law of honor consists of a set of maxims, written or understood, by which persons of a certain class either agree to regulate, or are expected to regulate their conduct. It is evident that the obligation of the law of honor, as such, results exclusively from the agreement, tacit or expressed, of the parties concerned. It binds them, because they have agreed to be bound; and for no other reason. He who does not choose to be ranked among the subjects of the law of honor, is under no obligation to obey its rules. These rules are precisely upon the same footing as the laws of free-

- 1 What is Moral Philosophy, or Ethics?
- 2 What is the use of this science?
- 3 What are the ordinary rules of life?
- 4 May all these laws be called *essential* rules of conduct?
- 5 Of what does the law of honor consist?
- 6 Why is any one bound by the laws of honor?
- 7 Is any one obliged to obey its rules?



masonry, or the regulations of a reading-room. He who does not choose to subscribe to the room, in the one case, or to promise conformity to masonic laws, in the other, is under no obligation to regard the rules of either."—*Diamond's Essays on the Principles of Morality*. Essay 1, Pt. 2, chap. 4.]

#### CHAP. II.—LAW OF HONOR.

The Law of Honor is constructed by people of fashion, and is calculated for their use.

Hence it regulates duties only *betwixt equals* in society, and omitting such as relate to inferiors in life, passes no censure on acts hurtful to society, unless they interfere with the concerns carried on between such equals. And hence unfeeling conduct to domestics and dependants, and the non-payment of debts to tradesmen, are no offences in the code of Honor.

Again, the Law of Honor, being constructed by persons in the pursuit of pleasure, and for the mutual convenience of such, passes no censure on acts connected with that pursuit; and is, in most instances, favorable to the licentious indulgence of the natural passions, and, disregarding the law of God, even ordains, as in the case of duelling, a kind of murder.

#### CHAP. III.—LAW OF THE LAND.

They, whom the Law of Honor does not affect, make the Law of the Land their rule of life; and are content so long as they do or omit nothing for which some law can punish them.

But such a rule is defective, because the law itself is doubly so; for it omits many duties, and permits many crimes.

- 8 By whom is the law of honor constituted?
- 9 What duties does it regulate?
- 10 What does it omit?
- 11 Does it censure all acts that are hurtful to society?
- 12 What kind of vices does it not consider as offences?
- 13 For whose convenience is the code of honor?
- 14 What follows from this fact?
- 15 Do its followers always hold it subordinate to the will of God?
- 16 With what are those content who make the law of the land their only rule of life?
- 17 Is that rule defective? Why?

I. It omits many duties, as not objects of compulsion. For as it never speaks but to command, and commands only where it can compel; *voluntary* duties, such as piety to God, bounty to the poor, &c. must necessarily be omitted, as beyond the reach of the law.

II. It permits, or rather does not punish, many vices, because they are incapable of positive description; for instance, prodigality, disrespect to parents, &c. For either it must define accurately the crime to be punished, or it must leave to the *discretion* of the magistrate the application of a vague description to the individual case; and thus lead the way to the tyrannical abuse of power. In all cases, where the uncertain nature of the act defies a previously fixed description, the law, in free states, chooses rather to leave men at liberty, than to invest the magistrates with a power so full of danger.

#### CHAP. IV.—LAW OF GOD.

Whoever expects to find in the Scriptures a specific solution of every doubtful point of moral conduct, looks for more than he will meet with. Had it been otherwise, the volume would have been too bulky to be read, much less circulated; and, in the language of St. John, the world itself would not have contained all the books necessary to be written. This will appear manifest from considering, that the laws of England alone, with its acts of parliament and decisions of the courts, occupy nearly one hundred folio volumes; and yet in not one instance out of ten, when looking for a particular case, can you find one exactly in point; to say nothing of

18 What duties does the law of the land omit?

19 What kind of duties are not objects of compulsion?

20 Can there be law without compulsion?

21 What class of vices go unpunished by the laws of the land?

22 Mention a few examples.

23 What are the only two methods that will lead to their punishment?

24 We have said that the first cannot be done. Would it be proper to trust to the discretion of the magistrate? Why?

25 Is it done in free states?

26 What is the consequence of not granting that power?

27 Can we find in the Scriptures a particular rule for every act of morality?

28 Why is that the case?

29 What evidence have we that particular rules would render the Scriptures too bulky?



other numerous doubtful cases, on which the law neither does nor professes to state and thing positive. So far, then, from imitating the particularity of human laws, by which the bulk, not value, of the volume would have been increased; the Scriptures teach morality by general rules, relating to piety, justice, benevolence, and purity; such, for instance, as to worship God in spirit and in truth; to do as we would be done by; to love our neighbor as ourself; and, that pollution arises, not from what goes into the mouth, but what comes out of the heart.

These rules are illustrated by *fictitious examples*, as in the parable of the good Samaritan; or by *real events*, as in Christ's praise of the widow's mite; or by *answers to questions* put to Christ or his disciples, as in the case of the young man who asked, "What lack I yet?"

This plan of instruction is, in fact, the same that is pursued in the practical sciences; where certain rules are laid down, and examples subjoined, not with a view to embrace every possible case, but merely to explain the principle, and to exhibit a specimen of its application. In the Scriptures, however, there is this difference; that neither the rules nor examples are given methodically, but as occasion suggested the one or the other; and thus both carry with them a feeling of vividness far superior to the coldness of a regular system.

Besides, as the Scriptures are addressed to persons not quite ignorant of the principles of natural justice, they do not so much teach new *rules* of morality, as enforce the practice of it by new and better *motives*. Thus, for instance, extortioners are condemned by the Scriptures, while the act of extortion is supposed to be known, and consequently not defined there.

Thus much has been said to prove, that, if the Scriptures be deficient, they are so from design; and that they do not supersede the use of a science by which such deficiency can be best supplied.

30 How is morality taught in the Scriptures?

31 How are these rules illustrated?

32 How does the scriptural plan of instruction agree with that pursued in practical science?

33 Is there any difference between the two plans?

34 What is supposed in scriptural instruction? 35 Give an example.

36 What is the object of scriptural instruction?

37 What has been intended by these remarks on the scriptures?

## CHAP. V.—THE MORAL SENSE.

The father of Caius Toranius, having been proscribed by the triumvirate, concealed himself in a place known only to his son; and by this son, who soon after came over to the interests of the triumvirate, he was betrayed. The old man, more anxious for his son's safety and advancement, than about his own danger, inquired of the officers who seized him, whether his son was well, and had done his duty as a soldier? "That son," said the officer, "so dear to thee, has betrayed thee; and to him," striking the old man with a poniard, "thou owest thy death." The unhappy parent fell, affected not so much by his fate, as by the treachery of his child.

If this story were related to a savage, uninfluenced by the modes of thinking and acting common to civilized life, would he feel that sentiment of disapprobation of young Toranius' conduct which a civilized being feels?

They who maintain the existence of a moral sense, or an instinctive love of virtue and hatred of vice, affirm that he would; they who deny the existence of such a sense, assert that he would not.

[“To those who are at all acquainted with the history of this dispute, it must appear evident that the question is here completely misstated; and that in the whole of Dr. Paley's subsequent argument on the subject, he combats a phantom of his own imagination. Did it ever enter into the mind of the wildest theorist to imagine that the sense of seeing would enable a man brought up from the moment of his birth in utter darkness, to form a conception of light and colors? But would it not be equally rash to conclude, from the extravagance of such a supposition, [that of a savage as above,] that the sense of seeing is not an original part of the human

38 What is the intention of the author in chapter 5? Ans. To ascertain whether there is a natural moral sense or conscience.

39 How does he commence the inquiry?

40 What answer would be given by those who believe that conscience is a part of our nature?

41 Who assert that he would not?

42 Is Dr. Paley's supposition concerning the last two assertions a proper statement of the case?

43 By what parallel question is the absurdity of Paley's statement shown?

44 What is the point of Stewart's argument?

frame?"—*Stewart's Philosophy of the Active and Moral Powers of Man.* Book ii. chap. ii.]

["It is necessary, for the supposition above, that the savage should understand, not merely what is meant by the simple relations of son and father, and all the consequences of the treachery of the son, but that he should know also the additional interest which the paternal and filial relation receives from the whole intercourse of good offices from infancy to manhood. The author of our mere being is not all which a father, in such circumstances, is,—he is far better known and loved by us as the author of our happiness in childhood and youth, and the venerable friend of our maturer years."—*Brown's Philosophy of the Human Mind, Lecture 75.*]

["In contending for the independence and originality of our moral feelings," says Dr. Brown, "I do not contend that we are capable of these feelings at a period in which we are incapable of forming any conception of the nature and consequences of actions:—that, for example, we must feel instant gratitude, to our mother or our nurse, for the first sustenance or first cares which we receive, before we are conscious of any thing but of our momentary pleasure or pain. We only assert, that when we are capable of understanding the *circumstances* of actions, we then have feelings of moral approbation or disapprobation."—*Ib. Lecture 79.*]

As the experiment with the savage before mentioned, has never been made, and is not likely, even if it were possible, to be made, the event can be decided from probable reason alone.

They who contend for the affirmative, say that we approve of virtue, and condemn vice, on the instant and without deliberation, unaffected by personal interest, and unable even to give a reason for such approbation; and that as this feeling is universal, it can arise only from an instinctive moral sense.

45 What does Mr. Brown say is necessary for Paley's supposition? Why?

46 If a person has this knowledge, can he be called a savage?

47 What follows from this fact?

48 What is not contended for, by the advocates of instinctive conscience?

49 What do they assert?

50 In what manner should we be obliged to judge of the event, if the supposition was correct? Why?

51 What reasons have they who would answer in the affirmative?

To this it has been replied, 1. That this feeling is not universal; that there is scarcely a single vice, which is not countenanced in some age or country; that, for instance, in one place aged parents are supported, in another destroyed by their children, under the same plea of affection; that suicide was in Rome heroism, is in England felony; that theft, which is punished here, was praised in Sparta; that, in fine, many things reprobated by civilized nations are practised without reserve by savages. Nor is this difference confined to different nations; even persons living in the same place view the same acts in a different light; and their different opinions, depending on the accidental circumstances of sex, age, or station, cause some to consider forgiveness of injuries as magnanimity, while others deem it a meanness; and so of other acts, which are approved and condemned according to ever varying fashion, unstamped with the steady hand and indelible characters of universal nature.

[“But the historical facts which have been alleged to prove, that the moral judgment of mankind are entirely factitious, will be found, upon examination, to be either the effects of misrepresentation or to lead to a conclusion directly the reverse of what has been drawn from them:—proper allowance being made, 1. For the different circumstances of mankind in different periods of society; 2. For the diversity of their speculative opinions; and, 3. For the different moral import of the same action, under different systems of external behavior.”—*Stewart’s Outline of Moral Philosophy*.—Mr. Stewart also says, “It is sufficient to refer, *on the origin of infanticide*, to Mr. Smith’s Theory on Moral Sentiments; and, *on the alleged impiety among some rude tribes of children towards their parents*, to Charon *Sur la Sagesse*, and to an excellent note of Dr. Beattie’s in his Essay on Fable and Romance.”]

[“Again, the same action (if that can truly be called the same action, which is performed, perhaps, with very different views or in different circumstances) is, as we might

52 What reply has been given to these reasons?

53 What examples have been adduced to substantiate the reply?

54 What differences are mentioned as found among those who may be supposed to associate together?

55 What does Mr. Stewart remark concerning the examples here mentioned?

56 What allowances does he require to be made?



naturally have supposed, capable of exciting in us different emotions, according to this difference of views or circumstances. It may excite our approval in one case; or, in another case, be so indifferent as to excite no emotion whatever; and in another case, may excite in us the most vivid disapprobation. The action is nothing, but as it relates to the agent himself, having certain feelings, and placed in certain circumstances.”—*Brown’s Philosophy of the Human Mind, Lecture 73.*]

[“There are many cases in which the result of actions is complicated by a *mixture of good and evil*, and in which *we* may fix upon the *good*, and may infer the intention in the agent of producing this good, which is a part of the mixed result; while *others* may fix on the partial *evil*, and conceive him to have had in view the production of that. The same actions, therefore, may be approved and disapproved in different ages and countries, from the greater importance attached to the *good* or to the *evil* of such compound results, in relation to the general circumstances of society, or the influence, perhaps, of political errors, as to the advantage or injury to society of these particular actions; and in the same age, and the same country, different individuals may regard the same action with very different moral feelings, from the higher attention paid to certain partial results of it, and the different presumptions thence formed as to the benevolent or injurious intentions of the agent. All this, it is evident, might take place without the slightest mutability of the principle of moral sentiments; because, though the action which is estimated may *seem* to be the *same* in the cases in which it is approved or condemned, it is truly a *different action* which is so approved and condemned.”—*Ib. Lecture 75.*]

[On this principle, theft might be approved in Sparta, because it led to those habits of vigilance and activity, which that warlike people supposed highly necessary; *murder*

57 What two reasons may cause the same action at different times to excite in us different feelings of right and wrong?

58 How then must an action be esteemed?

59 Is the result of every action always completely *good* or entirely *evil*?

60 What different views, might this occasion from different individuals?

61 What would follow from this?

62 Does this argue a changeableness of conscience?

might be looked upon in the primitive states of society as necessary, because the checks of law and magistrates were unknown. 'In some countries honor is associated with suffering, and it is reckoned a favor to be killed with circumstances of torture. Instances of this occur in the manners of some American nations, and in the pride which an Indian matron feels when placed on the funeral pile of her deceased husband.' In such cases an action may have to us all the external marks of extreme cruelty, while it proceeded from a disposition generous and affectionate:]

[“But one argument more. That a rule of virtue has been ‘slighted and condemned by the *general fashion*,’ is no sort of evidence that those who joined in this general fashion did not still know that it *was* a rule of virtue. There are many duties which, in the present day, are slighted by the general fashion, and yet no man will stand up and say they are not duties. ‘Suicide, in one age of the world, has been heroism, in another felony;’ but it is not every action that a man says is heroic that he believes is *right*. ‘Forgiveness of injuries and insults is accounted by one sort of people magnanimity, by another meanness;’ and yet they who thus vulgarly employ the word meanness do not imagine that forbearance and placability are really wrong.

“After all, the uniformity of human opinion respecting the great laws of morality is very remarkable. Sir James Mackintosh speaks of Grotius, who had cited poets, orators, historians, &c. and says, ‘He quotes them as witnesses, whose conspiring testimony, mightily strengthened and confirmed by their discordance on almost every other subject, is a conclusive proof of the unanimity of the whole human race on the great rules of duty and fundamental principles of morals.’”—*Dymond’s Essays on the Principles of Morality*. Essay 1. chap. 6.]

2. Granting that some general decisions are made without deliberation on points of conduct, and those, too, without any inducements of interest on our part; yet such apparent rapidity of judgment is no proof of the existence of an in-

63 Give a few examples which may be explained by this principle.

64 Is a general perpetration of a vice, any evidence that individual consciences do not condemn it?

65 Mention a few examples.

66 Is there in fact a great diversity of opinion respecting right and wrong?

67 What is the second argument against the idea of a moral sense?

stinctive moral sense. Because, this phenomenon may be easily accounted for, by remarking the facility with which the mind draws general conclusions from insulated facts ; and by noticing how readily the sentiment, which was the result of reflection as applied to the first case of a moral question, acquires the force of an habitual sentiment, when applied to a subsequent similar case.

Of this continuance of a feeling, even when the reason for it has ceased, the example of the miser is remarkably in point; who, when in years, and without ties of blood or friendship, continues to add to his hoard, and although he may even be sensible of his folly, still carries on his pursuit with all the ardor of an incipient passion, or the dread of impending starvation.

By such means, the custom of approving or disapproving certain actions *commences*: and the custom, once established, grows stronger and stronger by the various modes of social intercourse, such as censure and encouragements, the tendency of books and conversation, &c. ; until the lesson of the child, repeated by the man and scarce forgotten in dotage, produces that uniformity of sentiment, which is felt by all, though traced by few during its progress of association to the real principle of *imitation*.

Of the power of this principle the most conspicuous instance is afforded by children, in whom the propensity to imitate is, if any thing deserves the name, an instinct. By this very power, children learn first the words and then the ideas attached to the terms connected with the feelings of love and hatred, and of praise and censure, and thus exemplify, both in theory and practice, the *generation* of a moral sense.

[“ But it is admitted that our moral powers, like all our other powers, may be influenced by education, by passion, by habit, by association, and by political arrangement; but by no circumstances can man be brought to view pure benevolence and deliberate malice with the same feelings, or to regard all the actions of voluntary agents with the same

68 What example is given to prove that conscience proceeds from habit ?

69 How is it said that the custom of approving certain actions is continued ?

70 To what ultimate principle is it ascribed ?

71 What is said of imitation ?

72 Do the advocates of the moral sense admit that it may be influenced ?

73 To what length in this admission will they not go ?



equal indifference.”—*Dewar’s Elements of Christian Ethics*, Book ii. chap. 9.]

Another objection to the system of moral instincts is, that its maxims do not bend to circumstances. Veracity, which seems to be, if any, a moral duty, is not in that system permitted to be violated, as it ought to be. For as the obligation of a promise depends on the circumstances under which it was made, it cannot be enforced, if it was unlawful at the time in which it was made, or if it has become so since, or if it was extorted.

It has been further objected to the same system, that, if there existed an instinctive moral sense; a clear idea also would have existed of the object connected with such instinct. For the instinct and object are of necessity inseparable, both in imagination and reality; that is, if it were an *instinct* to approve an act, we should have (what we have not) a clear *conception* of such act.

As the preceding argument, however, if true, would deny the existence of instinct even in brutes, it will hardly carry conviction, although it cannot easily be answered.

[On this subject, Dr. Brown remarks, “I am astonished, that Paley should have stated this as an objection, to which ‘it is difficult to find an answer;’ since there is no objection to which the answer is more obvious. There is not a feeling of the mind however universal it may be, to the existence of which, precisely the same objection might not be opposed. There is no part of the world, for example, in which the proportions of number and quantity are not felt to be the same. Four are to twenty as twenty to a hundred, wherever those numbers are distinctly conceived; but, though we come into the world capable of feeling the truth of this proportion, when the numbers themselves shall have been previously conceived by us, no one surely contends that it is necessary, for this capacity, that we should come into the world with an accurate knowledge of the particular numbers.”—Lec. 74.] But Dr. Paley continues,—

It seems to me, either that there is no instinctive moral

74 What other objection has been brought against moral instincts?

75 What virtue is adduced as example?

76 What is said to be the obligation of veracity?

77 What argument is brought from the *nature* of instincts?

78 What would this argument tend to?

79 How does Dr. Brown answer it?

sense, or if there is, it is not to be distinguished from habit; and consequently it is unsafe to found on such uncertain data a system of ethics; or to determine on the right or wrong of certain actions by appealing to impulses, which may or may not exist, instead of looking, as we ought, to the general tendency of such actions.

[This is the conclusion to which Paley has arrived. But the opposite opinion is maintained by the generality of modern writers. It is but just to Dr. Paley to suppose that he was 'combatting a phantom of his own imagination.' He probably considered the moral sense as a supposed infallible arbiter of *action*, while the true definition refers it only to the *intention* of the actor. We will subjoin a few authorities.]

["Conscience is an original and inherent faculty in man, and is universal in its operation. If any doubt had remained as to the existence of the moral faculty, or conscience, as an original power in human nature, that doubt would be removed by the explicit testimony of the apostle, which I am about to quote. The passage which contains this testimony must have escaped the notice of Paley, otherwise he would not have hesitated, as he has done, in admitting that man is endowed with a moral capacity. 'For when the Gentiles, which have not the law, do by nature the things contained in the law, these having not the law, are a law unto themselves: which show the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the meanwhile accusing, or else excusing one another.'"]—*Dewar's Elements of Christian Ethics*. Chap. 9.]

["The moral faculty is an original principle of our constitution, which is not resolvable into any other principle or principles more general than itself; in particular it is not resolvable into self-love or a prudential regard to our own interests."]—*Stewart's Philosophy of the Active and Moral Powers of Man*. Book ii. chap. 3.]

["In tracing our moral feelings to an original susceptibility

80 What is Dr. Paley's conclusion relative to the point in debate?

81 Is this the opinion of other writers?

82 What probably occasioned this decision of Paley's?

83 Give Dr. Dewar's opinion.

84 What Scripture does he quote as authority?

85 What is Stewart's opinion?

of the mind, we may be considered as arriving at a principle like that which Dr. Hutcheson, after Lord Shaftesbury, has distinguished by the name of *moral sense*. The phrase *moral sense*, however, I consider as very unfortunate. But whether the feeling that attends the contemplation of certain actions admit of being more justly classed with our sensations, or perceptions, or emotions; there *is* still a susceptibility of this feeling, or set of feelings, original in the mind, and as essential to its very nature, as any other principle or function, which we regard as universally belonging to our mental constitution; as truly essential to the mind, indeed, as any of those *senses* among which Dr. Hutcheson would fix its place.”—*Brown on the Human Mind*. Lec. 82.]

Aristotle presumes that nature intended that barbarians should be slaves; and deduces from this maxim conclusions in favor of the slave-trade, which then prevailed; and the same maxim is doubtless self-evident to those who are now engaged in a similar traffic.

Now in this example it is plain that the laws of custom have been mistaken for the order of nature; and as nothing is so easy as to mistake a maxim, when in unison with the prejudices of the maker; Dr. Paley argues that it is to be feared a system of morality, founded on instincts and impulses, would only find out excuses for established practices rather than reasons for correcting them.

[This is another evidence that Dr. Paley mistook the nature and the intention of the moral faculty. It is not considered as establishing a system of practical morality by passing sentence upon each moral act in detail; but merely enforcing general duties, and leaving our own understandings to decide what particular duties should be inferred from them.—*See the following.*]

[“An action is (as a *moral* object) not the mere *production* of good or evil, but the *intentional* production of good or evil. It has no moral meaning whatever, but as it is significant of the *frame of mind* of the agent himself, willing

86 What does Dr. Brown say that *his* speculations lead to?

87 What is his opinion of the phrase *moral sense*?

88 What example does Dr. Paley bring to show that the laws of custom may be mistaken for the order of nature?

89 What principle does he deduce from this?

90 Would this be a correct deduction from acknowledging the moral faculty in its true nature?

91 What makes any action moral or immoral?

and producing a particular result.”—*Brown on the Human Mind*. Lecture 79.]

[“The epithets *right* and *wrong*, *virtuous* and *vicious*, are applied sometimes to *external actions*, and sometimes to the *intentions of the agent*. It was to obviate the confusion of ideas that arises from this ambiguity of language, that the distinction between *absolute* and *relative rectitude* was introduced into ethics. And as the distinction is equally just and important, it will be proper to explain it particularly; and point out its application to one or two questions which have been perplexed by that vagueness of expression which it is our object at present to correct.

“An action may be said to be *absolutely right*, when it is in every respect suitable to the *circumstances* in which the agent is placed. Or, in other words, when it is such as, with perfectly good intentions, under the guidance of an enlightened and well-informed understanding, he would have performed.

“An action may be said to be *relatively right*, when the *intentions* of the agent are sincerely good, whether his conduct be suitable to his circumstances or not.

“According to these definitions, an action may be right in one sense, and wrong in another; an ambiguity in language which, how obvious soever, has not always been attended to by the writers on morals.

“It is the relative rectitude of an action which determines the *moral desert* of the agent; but it is its absolute rectitude which determines its *utility* to his worldly interests and to the welfare of society.”—*Stewart’s Active and Moral Powers of Man*. Book iv. chap. 5. Also, *Outlines of Moral Philosophy*. Lecture 5.] Dr. Paley proceeds in his argument, which we will insert, although it appears to be foreign to our subject.

Granting the existence of moral instincts; what is their power? The power, it is said, of conscience, whose remorse the ill-doer feels. But if he does not feel that remorse, or if

92 To what are the terms *right* and *wrong*, *virtuous* and *vicious* applied?

93 What remedy has been used for this ambiguity of language?

94 When is an action said to be *absolutely right*?

95 When is an action said to be *relatively right*?

96 What ambiguity in language do these definitions occasion?

97 What kind of rectitude determines the moral desert?

98 What kind determines the utility of an action?



he holds it light, when balanced against the pleasure or profit of a wicked act; (on which point, the sinner who feels both the pleasure of the sin and the pain of remorse, is the best judge;) the advocate for a moral instinct has no motive sufficiently high to offer. For should he say that such instincts are indications of God's will, and a presage of a future state; we reply, he resorts to a rule and motive ulterior to instincts, and which the believer in the Scriptures arrives at by a surer road; at least so long as the question remains unsettled whether there is an existence or not of instinctive maxims. This question is, therefore, in our system one of mere curiosity; and left to those who are more inquisitive than ourselves about the natural history of man.

[But Bishop Butler says, "The practical reason of insisting much upon the natural authority of conscience, is, that it seems in a great measure overlooked by many, who are by no means the worse sort of men. It is thought sufficient to abstain from *gross* wickedness, and to be humane and kind to such as happen to come *in their way*. Whereas, in reality, the very constitution of our nature requires that we bring our *whole conduct* before this superior faculty; wait its determination; enforce upon ourselves its authority; and make it the business of our lives, (as it is absolutely the whole business of a moral agent,) to conform ourselves to it. The observation that man is thus, by his very nature, a law to himself, pursued to its just consequences, is of the utmost importance. Because, from it will follow, that though men should, through stupidity or speculative scepticism, be ignorant of, or disbelieve any authority in the universe to punish a violation of this law; yet, if there should be such authority, they would be as really liable to punishment, as though they had been convinced beforehand, that such punishment would follow. Because it is not *foreknowledge* of the punishment, which renders obnoxious to it; but merely *violating a known obligation*." Preface to Sermons on Human Nature.]

[The object of Dr. Paley, in his preceding remarks, ap-

99 In conclusion, what does Dr. Paley say of this question?

100 Has Bishop Butler the same opinion?

101 What would follow from determining that conscience is a law to man?

102 What is it that renders us liable to punishment?

103 What was the object of Dr. Paley in his remarks on the moral sense?

appears to have been, to show that the moral faculty should not be our guide in regulating our duties. But nearly all modern moralists have come to a different conclusion.]

[Dr. Dewar says, "This is the monitor which God has superadded to reason, which, while it shows us the essential distinction between what is right and wrong in actions, between virtue and vice, reminds us of the high and glorious purposes for which our nature has been formed."—*Elements of Christian Ethics*. Book iii. chap. 2.]

[Mr. Stewart says, "Every being who is conscious of the distinction between right and wrong, carries about with him a law which he is bound to observe." And in support of this proposition, he has quoted passages from many authors.—*Philosophy of Active and Moral Powers of Man*. Book ii. chap. 6.]

[Mr. Dymond says, "With respect to the *authority* which properly belongs to conscience as a director of individual conduct, it appears manifest alike from reason and from Scripture, that it is great. When a man believes, upon due deliberation, that a certain action is right, that action is right *to him*. And this is true, whether the action be or be not required of mankind by the moral law. The fact that in his mind the sense of obligation attaches to the act, and that he has duly deliberated upon the accuracy of his judgment, makes the dictate of his conscience upon that subject an *authoritative* dictate. The individual is to be held guilty if he violates his conscience,—if he does one thing, while his sense of obligation is directed to its contrary. These principles respecting the authority of conscience are recognised in Scripture. 'One believeth that he may eat all things: another who is weak eateth herbs. One man esteemeth one day above another; another esteemeth every day alike.' Here then are differences, nay, contrarieties of conscientious judgments. And what are the parties directed severally to do? 'Let every man be fully persuaded in his own mind;' that is, let the full persuasion of his own mind be every man's rule of action. Thus again: 'I know

104 Do other moralists agree with him?

105 What does Dr. Dewar say is shown by conscience?

106 What does Stewart say of our observing its dictates?

107 What does Mr. Dymond say of its authority?

108 What makes an action right in his opinion?

109 What does he think makes a man guilty?

110 What two examples does he bring from scripture?

and am persuaded by the Lord Jesus, that there is nothing unclean of itself;’ therefore absolutely speaking, it is lawful to eat all things: ‘but to him that esteemeth any thing to be unclean, to him it is unclean.’ Rom. xiv. The question is not whether his judgment was correct, but what that judgment actually was.”—*Prin. of Morality*. Essay 1. ch. 6.]

[Dr. Paley himself says in his sermons, “Conscience, our own conscience, is to be our guide in all things.”—“It is through the whisperings of conscience, that the spirit speaks. If men are wilfully deaf to their consciences, they cannot hear the spirit. If hearing, if being compelled to hear the remonstrances of conscience, they nevertheless decide and resolve and determine to go against them; then they grieve, then they defy, then they do despite to, the Spirit of God.”]

[But as Dr. Dewar says, “Though conscience is an original and inherent faculty in man, and universal in its operation, it requires, in order to discharge its office fully, to be enlightened by moral and religious truth. Our moral powers, like all our powers, may be influenced by education, by passion, by habit, by association, and by political arrangements. And it is not to be denied that this power of human nature is affected with the corruption of the race; and that this corruption shows itself by moral insensibility. Hence in the Scriptures, persons under the dominion of hardness and impenitency of heart, are likened to the deaf adder that stoppeth her ear, which will not hearken to the voice of the charmer, charm he never so wisely; and they are said to have the understanding darkened, being alienated from the life of God through the ignorance that is in them, because of the blindness of their heart, and who are past feeling.”—*Elements of Christian Ethics*. Book ii. chap. 9.]

[But further, in the words of Mr. Stewart, “A strong sense of duty will induce us to avail ourselves of all the talents we possess, and of all the information within our reach, to act agreeably to the rules of *absolute rectitude*. And if we fail in doing so, our negligence is criminal. Not-

111 Did Dr. Paley always hold to the same sentiments that he has advocated here?

112 Can our moral powers be affected by any circumstances?

113 What does Dr. Dewar say is rendered necessary by this?

114 Will not conscience, if it has its perfect work, correct itself in this respect?

115 If we do not fulfil this duty, what is the consequence?

withstanding, however, the truth and the importance of this doctrine, the general principle already stated remains incontrovertible, that in *every particular instance* our duty consists in doing what appears to us to be *right* at the time; and if, while we follow this rule, we should incur any blame, our demerit does not arise from acting according to an erroneous judgment, but from our previous misemployment of the means we possessed for correcting the errors to which our judgment is liable.”—*Philosophy of the Active and Moral Powers*. Book iv. chap. v. sec. 3. *Outlines*, Lecture 5.]

[The business of *ascertaining the rules of absolute rectitude* is the most important part of the science of ethics. “Indeed without this study, the best dispositions of the heart, whether relating to ourselves or to others, may be in a great measure useless.” This is the study which is to be pursued in the subsequent part of this work.]

#### THE CULTURE OF THE MORAL FACULTIES.

[Mr. Stewart gives the following as the difference between conscience and moral faculty. “*Conscience* refers to our own conduct alone; whereas, the *moral faculty* is meant to express also the power by which we approve or disapprove of the conduct of others.”—*Active and Moral Powers of Man*. Book iv. chap. 2.

“The moral faculty, like the faculty of reason, (which forms the most essential of its elements,) requires care and cultivation for its developement; and, like reason, it has a gradual progress, both in the case of individuals and of societies.”—*Id.* Book iv. chap. 5. sec. 4.

“While God has so formed our nature as to be capable of admiring and practising virtue, he has intrusted the culture of our moral powers to our own care; and has reminded us that for our diligence in improving this noblest part of our stewardship, we are to give an account at his tribunal.”—*Dewar’s Christian Ethics*. Book ii. chap. 9.

There are several methods by which our consciences may be cultivated; and,

116 Where in such circumstances would our guilt fall?

117 What then is the most important part of ethics?

118 How does the moral faculty differ from conscience?

119 Can the moral faculties be improved?

120 Is it our duty to improve them?

121 What is the first means of training our moral faculties?



1. By the virtuous influence of others. The infant mind is formed by the care of our early instructors, and for a long time thinks and acts in consequence of the confidence it reposes in their superior judgment. All this is undoubtedly agreeable to the design of nature; and, indeed, if the case were otherwise, the business of the world could not possibly go on. For nothing can be plainer than that the multitude, condemned as they are to laborious employments, inconsistent with the cultivation of their mental faculties, are wholly incapable of forming their own opinions on the most important questions which can occupy the human mind." But the authority of this influence must not be too much relied upon. For, "it is evident that as no system of education can be perfect, many prejudices must mingle with the most important and best ascertained truths."—*Stewart*.

2. By a continual solicitude that our opinions and conduct should conform to the principles of moral rectitude. "Let any honest man," says Butler, "before he engages in any course of action, ask himself, Is this I am going to do, right, or is it wrong; is it good, or is it evil? I do not in the least doubt but that these questions would be answered agreeably to truth and virtue, by almost any fair man, in almost any circumstances."

3. The study of the Scriptures, and a firm adherence to the precepts they contain.\* "Man in his present state," says Dick in his *Philosophy of Religion*, "can be directed

122 Is this influence in accordance with the design of nature?

123 Is it necessary? Why?

124 Is this influence always on the side of virtue?

125 What is the second help in moral culture?

126 Would this disposition lead to truth?

127 What is the next great help in teaching us our duty?

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\* To some, this article may seem as foreign to the subject. But its application where revelation is known is unavoidable. The intermediate truths, of the being and government of God, the revelation of his will to mankind, and his wisdom and holiness in willing that which is right, is considered, in this work, as assented to. We wish to state, however, in the language of Mr. Dick, "That the laws of God are not the commands of an arbitrary sovereign, but are founded on the nature of things, and on the relations which exist in the intelligent system." And again, in the language of Dr. Dewar, "The law of God is the explicit announcement of the nature and extent of those obligations devolving upon men, which had previously existed, and would have existed though no such announcement had been made."

only by *positive laws*, proceeding from the Almighty; whose comprehensive mind alone can trace all their consequences to the remotest corners of the universe, and through all the ages of eternity. These laws are contained in the *Scriptures*; and we know, in point of fact, that in every country where these laws are either unknown, or not recognised, there is no fixed standard of morals; and vice, in its various ramifications, almost universally prevails."

4. "Finally an habitual effort to cultivate a sense of the Divine presence, and an habitual desire to have the whole moral condition regulated by this impression."—"He who earnestly cultivates this purity within, feels that he requires continual watchfulness, and a constant direction of the mind to those truths and moral causes which are calculated to influence his volitions. He feels further that he is in need of a might not his own in this high design; but *for this* he knows also he can look, with humble confidence and hope, when, under a sense of moral weakness, he asks its powerful aid."

To these may be added the assistance which conscience may receive on *particular occasions*, as Mr. Stewart says, "from the exercise of reason; especially when there appears to be an interference between *different duties*, and where, of course, it seems necessary to sacrifice one duty to another; and also, when the ends at which our duty prompts us to aim, are to be accomplished by means which require choice and deliberation."]

#### CHAP. VI.—HUMAN HAPPINESS.

"Happy" is a relative term, and regards an individual as compared either with others or himself. In the one case the comparison is with the lot of man generally; in the other with the individual's own previous or subsequent condition. Strictly speaking, that condition may be called happy, in which the aggregate of pleasure exceeds the amount of pain. The *quantity* of such excess is the *measure* of the degree

128 What is the state of morals where the Scriptures are not the standard?

129 By what desire should we be actuated in all our doings?

130. What feelings would this occasion?

131 In what cases may the exercise of reason assist us?

132 How is the word "happy" applied?

133 What condition may be called happy?

of happiness ; and the *greatest* quantity attainable by man is what we mean to express, when the phrase *human happiness* is employed in our discourse. In this inquiry it is needless to enlarge on the dignity of man, of the superiority of the intellect over the body, of the delicacy and refinement of some pleasures, or of the grossness and sensuality of others ; because pleasures in fact differ only in degree, and not in kind ; and it is from a view of their *intensity*, or of their *continuance*, that every question respecting human happiness must receive its decision. It will be our business merely to show, I. What human happiness does not consist in ; and, II. What it does consist in.

1. Happiness does not consist in the pleasures of sense ; that is, gratification of animal appetites, admiration of works of art, and exercise in active sports. For, 1st, these pleasures are short-lived, especially the grosser kind ; and much more so when considered independently of the aid derived from preparation and expectation. 2dly, they lose their charm by repetition ; for, as the nerves, by which we receive pleasurable sensations, lose their sensibility by frequent exercise ; in the same way the mind becomes indifferent to a gratification no longer new. 3dly, the eagerness for intense delights destroys the relish for others less intense ; and as such high gratifications occur seldom, time must hang heavy on our hands.

From no delusion do men suffer so much as from the expectation of intense pleasure. The very expectation spoils the anticipated delight. Even when the enjoyment does come, efforts are made to persuade ourselves of the reality of the pleasure, instead of our finding that the pleasure is produced without effort ; and the delight we aimed at is gene-

134 What is meant by the phrase *human happiness* ?

135 Do pleasures really differ in kind ?

136 What two considerations must enter every question on happiness ?

137 What does the author propose to show ?

138 What is his first remark on the negative ?

139 What does he call pleasures of sense ?

139 What is the first reason ?

140 What is the second reason ? How so ?

141 What is the third reason ? What follows from that ?

142 What is said of the expectation of intense pleasure ?

143 When enjoyment does come, how is it accompanied ?

144 Do we experience the delight we aimed at ?

rally supplanted by the secret grief of having missed our aim. Besides, the habit of seeking powerful stimulants prevents the relish for less intense delights, whose variety and succession alone supply the stream of continued happiness.

They, whose whole business is the pursuit of pleasure, unrestrained by conscience or want of means, are still devoured by *ennui*. With a restless passion for variety, they become fastidious in the choice of pleasure: and though languid in the enjoyment, are miserable under the want of it. Their pleasures soon reach their limits, from which they as soon decline, because the organs of perception cannot long remain on the stretch. And in the endeavor to compensate for the brevity of the pleasure by its frequency, more is lost than gained, through the fatigue of the faculties and the diminution of sensibility; which, as age advances, are felt the most by the voluptuary, who, teased by desires that can never be gratified, is tortured still more by the memory of pleasures fled never to return. After all, these pleasures have some value; and although the young are always too eager in their pursuit of them, the old are sometimes too studious of their ease to take that pains for them which they really *deserve*.

2. Happiness does not consist in the absence of pain, bodily and mental, when that absence is accompanied by no kind of exertion. For such a listless state, like the opposite restless state of the voluptuary, brings with it the same feeling of *ennui*; and oppresses first the mind with imaginary evils, and afterwards the body with real ones. Hence the disappointment felt by those persons, who seek for happiness by a retirement from the bustle and glare of active life, to the leisure and tranquillity of a country house. Where the cause of uneasiness is known, by removing the cause, the uneasiness is cured. But where the distress is imaginary, (and, for

145 What kind of delights occasion continued happiness?

146 How do our anticipations affect the relish for them?

147 What is the general feeling of those whose professed pursuit is pleasure?

148 What is said of their pleasures? Why is that the case?

149 Can their brevity be compensated by their frequency? Why?

150 Are pleasures of this kind really valueless?

151 How do the aged and the young differ in their pursuit of them?

152 What is the second assertion on the negative?

153 What effect has the absence of exertion?

154 What disappointment does this account for?



the want of a real, imaginary distress is frequently substituted, and felt as keenly as the real,) the cure, from the ignorance of the cause, becomes impracticable; unless the attention of the party so suffering be turned from the imaginary to a real pain. This is a method of mitigation employed by nature. For instance, a fit of the gout will sometimes cure the spleen. In like manner, the active excitement of hope and fear leads men of liberal minds to gaming, and other spirit-stirring pursuits, to prevent the fatigue they would otherwise feel from the dead calm of passionless inaction.

3. Happiness does not consist in an elevated station of life. For if all superiority afforded pleasure, the greater the number over whom such superiority is found to be, the greater would be the quantity of happiness enjoyed. But superiority is a term of confined import, and relates only to a comparison amongst persons who deem themselves generally equal. The shepherd is not pleased with his superiority as compared with his dog, nor the prince as compared with a peasant. Where no competition exists, the superiority is lost; a fact little noticed by most men. But if the rustic can excel fellow-rustics, or the prince fellow-princes, in points where they respectively contend for mastery; then, and only then, does the idea of superiority bring with it actual satisfaction. Hence the pleasure of ambition is not confined, as generally thought, to men of high rank in life, but is in reality common to all conditions. The farrier, who is in the greatest request for his veterinary skill, possesses the delight of distinction, as truly and substantially as the prime-minister does whose skill is required to settle the affairs of the nation. In either case, it is not the *object* of competition, but the consciousness of *overcoming a rival*, that constitutes the pleasure of superiority.

Philosophers smile at the contempt shown by the rich to

155 What is said of imaginary distress?

156 What is the natural method of curing a trifling ailment?

157 What pursuits are accounted for on this principle?

158 What is the third negative assertion?

159 What would be the result if *all* superiority afforded pleasure?

160 What is necessary to make superiority a pleasure?

161 What kind of superiority does yield satisfaction?

162 Where does this fact show the pleasures of ambition to be? Give an illustration.

163 What do philosophers think of contempt shown by the rich, concerning ambitious strifes among the poor? Why?

the petty rivalries of the poor ; which, after all, are quite as reasonable as the squabbles of the rich themselves, to whom and to the poor the pleasure of success is the same.

That happiness, then, of the great, which depends on the pleasures of ambition, is not greater than the happiness of the vulgar. But whether the pursuits of ambition in any case can a source of happiness, is a question both irrelevant and doubtful. In those pursuits, the pleasure of success is exquisite ; but so also is the anxiety of pursuit, and the pain of disappointment if that should happen. But what is worse, the pleasure when obtained is short-lived. Rivals that are left behind are less regarded than those in view before ; a succession of new struggles is kept up as long as an opponent remains ; and when there is none, the pleasure and the pursuit are both at an end.

Happiness, then, does not consist in the pleasures of sense, in the absence of pain, or in the pursuits of ambition.

II. We are now to consider in what happiness does consist. In life, the great art is to know beforehand, what will please for a time and continue to please. But this foreknowledge is difficult of attainment. Some pleasures, alluring at a distance, become, when possessed, insipid or short-lived ; while others start up unthought of. The necessity of this foreknowledge is the greater, because it is commonly impracticable to change, after an experiment has been tried ; and were the change more practicable, it would be unadvisable, as such shifting is unfavorable to the happiness of any condition.

Through the great variety of taste in man, arising from every different shade of original structure and accidental situation, it is impossible to devise a plan of universal happiness. All that can be attempted is, to describe a mode of life, in which the majority will seem the happiest ; for though the apparent happiness is not the true indication of what is real, it is the best we can arrive at.

164 Is there happiness in any ambition ?

165 Give some description of the pursuit of it.

166 What is the conclusion of this section of the chapter ?

167 What is the great art in seeking for happiness ?

168 Why is this foreknowledge difficult ?

169 What increases the necessity of this knowledge ?

170 Will any plan of happiness be adapted to all ? Why ?

171 What is our best criterion of happiness ?



With this maxim as the guide, happiness will be found to consist—

1. In the exercise of the social affections. Good spirits are a proof of apparent, if not of real happiness. Now as they who lead a social life, surrounded by objects of affection, possess better spirits than they who pass a solitary life, it is fair to infer that they are more happy. In like manner, the exercise of social sympathies increases the sum of happiness by connecting the individual with the rest of mankind, through the refreshing medium of acts kindly done and gratefully acknowledged.

2. In the employment of our faculties in some interesting distant object. No fulness of present pleasure can insure a continuance of happiness, unless the mind has something to look forward to. Hence we see alacrity of spirits in those men who are engaged in objects of engrossing interest; and dejection in those, whose faculties have not been exerted at all, or have become exhausted from a too violent use of them. To avoid this insupportable vacuity of mind, recourse is had to practices destructive of health, fortune, or character; and objects are sought for with trouble, which could without trouble be obtained. But though hope, by giving rise to continued exertions, is of so much importance as an ingredient in happiness; care must be taken, else it may fret the mind into impatience, or destroy it by despair. To provide, then, ourselves with a succession of pleasurable engagements, there is need of judgment to choose the *end* adapted to our opportunities, and of imagination to transfer the idea of pleasure to the means used for obtaining that end.

Hence the pleasures most valuable are those productive not of most intensity of fruition, but of activity in their pursuit.

172 What is first mentioned as necessary to happiness?

173 What proof have we that social affections produce happiness?

174 What is next mentioned as necessary to happiness?

175 What is necessary to insure the continuance of present happiness?

176 What is an illustration of this?

177 What does a vacuity of mind lead to?

178 Is it necessary to temper our hope? Why?

179 What two things are necessary for our happiness?

180 What pleasures are most valuable?

Herein has the man, who is in earnest in his endeavors after a future state, the advantage over all the world. His pursuit is one of constant activity, and, unlike other pursuits, ends only with his life. Yet even such a man must have many ends besides the far one. But all such other ends are only subordinate to and co-operate with the main object of his fondest and firmest hopes.

Occupation is every thing. And it is the better as it is the more connected with our social state, with reference either to mankind or to individuals ; and as exhibited in strenuous endeavors to better in some way others or one's-self. But if faculties or opportunities be wanting to exert ourselves on a large scale or extensive sphere ; any engagement, however trifling, provided it be innocent, is better than none. For so long only as the mind is employed, it is happy. Misery is the inevitable result of a mind not fixed for the time being to one pursuit.

3. In the prudent formation of habits. The grand secret in the art of human happiness is to set the habits so that every change may be for the better. But as whatever is habitual is easy, and a return to an old habit after an occasional departure is also easy, those habits are the best, from which a deviation is an indulgence. To the habitually luxurious, dainties are of less worth, than is to the peasant his habitual homely fare ; from which when the latter deviates, he finds a feast ; while the former must be well entertained to escape disgust. They who sit at cards, and they who follow a plough, so long as both are intent on their respective employments, are equally happy ; but to the card-player, interruption is a pain ; to the ploughman a pleasure ; and hence the Sabbath is a day of rest to one, of restlessness to

181 How does this fact affect a man who lives for a future state  
Why is this the case ?

182 Can we suppose that any man lives solely for eternity ?

183 Of what character are the other objects of a good man ?

184 What enhances the value of occupation ?

185 What is the value of trifling engagements ?

186 What circumstances will render us happy, and what miserable ?

187 What is mentioned in the third place as necessary for happiness ?

188 How are such habits set ? What is this prudence called ?

189 What habits are best ? Why ?

190 Give some illustrations, in the case of the peasant ;—of the laborer ; —of one accustomed to retirement ;—of a reader of scientific works ?

the other. He who has learned to live alone, enters into company with hilarity, and leaves it without regret; while he who only lives in a crowd, enjoys in company only what the other does alone, habitual gratification. Remove, by a want of health or means, the one from his usual haunts, and he will find in solitude the horrors of melancholy; while the other can find there all the charm of repose. The one, restless through the day, is happy only when asleep; to the other, the day, being furnished with employment for every hour, is never too long; or if unemployed in body, he enjoys a kind of dreamy existence, with a mind at ease and hankering after nothing. In like manner, he who has been accustomed to read works of science and depth of thought, finds in lighter literature a relaxation and relish which is unknown to the reader who, with the desire of novelty alone, is rather seeking amusement than actually amused. And the latter also, quickly exhausting the scanty stock of publications to his taste, is left without objects of interest in the extensive field of intellectual enjoyment.

Again, as far as money brings happiness, it is not the income, but its increase, which gives the pleasure. Two persons, one of whom begins with a large and ends with a small income, while the other begins with a small and ends with a large one, may, in the course of the same time, spend the same sum; but their satisfaction will be different, depending on the fact whether they respectively began at the end of the ascending or descending scale.

4. In the enjoyment of health. By health is here meant not only freedom from bodily ailments, but the possession of good spirits; which, though dependent on the state of the body generally, are not usually included in the definition of that word. In this comprehensive sense, health is the one thing needful; and no sacrifice of rank and fortune, business or amusement, will be considered too great for its attainment, by him who pursues his happiness in a rational manner. It is a pleasure independent of all others; and of which we can only say that it is the gift of a benevolent Deity; and seems

191 How does money produce pleasure?

192 Give an illustration.

193 What is the fourth requisite for happiness?

194 What is meant by the health here spoken of?

195 Is all this generally included in the idea of health?

196 What is said of this kind of health?

to constitute the sole happiness of many animals, which, like oysters, possess no visible means of enjoyment.

From this view of happiness we may infer, what moralists have not proved :—1. That happiness is pretty equally distributed in civil society ; 2. That vice has no advantage over virtue, even in this world.

#### CHAP. VII.—VIRTUE.

Virtue is the doing good to mankind in obedience to the will of God, and for the sake of everlasting happiness.

In this definition, the “good of mankind” is the subject ; the “will of God,” the rule ; and “everlasting happiness,” the motive of virtue.

[Concerning the first part of this definition, Mr. Stewart says, “It has been supposed by some moralists that the obligation of all our moral duties arises entirely from their apprehended tendency to promote the happiness of society. Notwithstanding the various appearances in human nature, which seem at first view to favor this theory, it is liable to unsurmountable objections.”—*Outlines of Moral Philosophy*. Part ii. chap. 2. sec. 2.]

[Concerning the latter part of the definition, Dr. Brown says, “Virtue he defines to be, ‘the doing good to mankind, in obedience to the will of God, and for the sake of everlasting happiness.’ The last part of the definition is the most important part of the whole. For, the knowledge of this everlasting happiness he supposes to be all which constitutes moral obligation ; meaning, by obligation, not any feeling of *moral love*, but the influence of happiness as an object of physical desire, and of pain as an object of physical aversion ; one or other of which is to follow our obedience or disobedience to the command of the power who is the supreme dispenser of both. That part of the system of Dr. Paley, then, which makes the sole motive to virtue the happiness of the agent himself, is false.”—*Philosophy of the Human Mind*. Lecture 79.]

197 What two inferences are deduced from the positions advanced in this chapter ? 198 How does Dr. Paley define virtue ?

199 What does he say is the subject of virtue ? What the rule ? What the motive ?

200 Does Mr. Stewart agree with the first part of this definition ?

201 What does Dr. Brown say is all the obligation which the latter part of the definition supposes ? What does he say it lacks ?

202 Does he think that this is according to truth ?

[Mr. Stewart also says, "The system which makes virtue a mere matter of prudence leads to consequences which sufficiently show that it is erroneous. Among others it leads us to conclude, 1. That the disbelief of a future state absolves from all moral obligation, excepting in so far as we find virtue to be conducive to our present interest: 2. That a being independently and completely happy, cannot have any moral perceptions or any moral attributes."—*Outlines of Moral Philosophy*. Section 6.] [For remarks on the rule implied in this definition, see the chapter on utility.]

["As to the *motive*," says a writer in Rees' *Cyclopaedia*, "this is still more objectionable than the *subject*; for it excludes, not only the virtuous actions of those who do not believe in a future state, but even those which spring from a *disinterested regard* to the welfare of others, to the will of God, or to the dictates of conscience; that is, when an action becomes the most virtuous, then, according to the definition which Paley has adopted, it *ceases to be* virtuous."]

[The following is Mr. Dymond's definition of virtue, "*Virtue is conformity with the standard of rectitude; which standard consists primarily in the expressed will of God.*"]

Virtue has been divided into benevolence to propose good ends; prudence to suggest the best means for their attainment; fortitude to encounter the difficulties and dangers attending our undertaking; and temperance to bear down the opposing feelings from within. For instance, benevolence leads us to assist an orphan; prudence teaches us how to assist him best; fortitude enables us to bear the evils resulting from such act of assistance; and temperance keeps down every selfish consideration likely to interfere with the end proposed.

Virtue has been also divided into prudence and benevolence; the former, attentive to our own interest, the latter to that of our fellow creatures; and both directed to the increase of universal happiness.

203 What conclusions does Mr. Stewart say the last part of the definition leads to?

204 What does another writer say that it excludes? What follows from this?

205 What is Mr. Dymond's definition of virtue?

206 How does Dr. Paley say that virtue has been divided? Give an illustration.



The four Cardinal Virtues are, Prudence, Fortitude, Temperance, and Justice.

But the division of Virtue, in modern times, is into duties : 1. Piety, &c. towards God : 2. Justice, &c. towards our fellow-creatures : and, 3. Temperance, &c. towards ourselves.

#### GENERAL OBSERVATIONS ON THE REGULATION OF CONDUCT.

Man acts more from habit than reflection. On few points of moral conduct do men think at all ; on fewer still do they wait for the result of reflection. The opinion is generally determined by a sudden impulse, which is the result of previous habits. This conduct, though apparently wrong, is really right, and the best suited to the weakness of human nature. In the rapid events of life there is little leisure for reflection : and were there more, he who reasons when he ought to act, is sure, in case of temptation, to reason wrong.

But if man is thus passive under his habits, where, it is asked, is the exercise of virtue and the guilt of vice ? We answer, in the formation of such habits.

Hence arises the necessity of doing or omitting many things for the sake of habit alone. For instance, a person in apparently great distress begs for charity. If we asked ourselves, whether the object be really deserving, whether charity so bestowed be not to encourage idleness, whether the money could not be better applied ; we should, perhaps, doubt of giving relief at all. But when we reflect that the distress exists, that the feeling of charity ought to be cultivated, that if it be not cultivated, selfishness will spring up ; when we consider all this, we will, if we are wise, do for our own sake what we would not do for the beggar's, and act generously rather than do violence to a habit so generally useful. Again, a man is in the habit of strict veracity. But an occasion occurs where a deviation from truth seems excusable for the sake of gratify-

207 What are called the four cardinal virtues ?

208 What is the modern division of virtue ?

209 What is the great principle of human action ?

210 What influence has the understanding generally on opinions ?

211 How then are they formed ?      212 Is this right ? Why ?

213 What question does this give rise to ? How is it answered ?

214 What rule results from this ? Give an example.

215 How would a good man act in such circumstances ?

216 Give another example. Why would not indulgence be allowable in that case ?



ing others and himself. The lie he has to tell is harmless, and also amusing. Why then should he not indulge in it? The answer is, it will destroy his previous habit of strict veracity; that similar occasions may return, where the temptation is less, the mischief more; and as his scruples will wear away by a few transgressions, the habit of lying will be induced, and then yielded to whenever it suits his purpose.

Hence, too, may be explained the nature of *habitual* virtue; through the operation of which a man may perform various acts of virtue, although he may be uninfluenced by, or even ignorant of, the subject, rule, or motive of virtue. How so? it will be asked. Precisely, it will be replied, as a man may be a very good servant, without being conscious of studying at every turn his master's interest. But then he must for a length of time have been under the actual influence of such motives; and in that previous habit his present virtue consists.

Man is, in truth, a bundle of habits. Every virtue and every vice, every modification of word, thought, and deed, can and does become a habit; nor is there a quality or function of the body or mind, that is not influenced by this great law of human nature.

II. Christianity has not defined the precise quantity of virtue necessary for salvation.

As all revelation must be transmitted through the ordinary vehicle of language, this objection will not require an answer, until it be shown that any form of words could express this quantity; or that a standard of moral conduct could exist, adapted to the capacities and circumstances of different men. It is enough for us to know from Scripture\* that the rewards and punishments will be so fitted to *every degree* of virtue and vice, that none may labor in vain. It has been objected, that God acts unjustly in admitting one part into heaven, and condemning the other to hell, because

217 What may be explained from what has been said?

218 What is habitual virtue? How is it occasioned?

219 What is man as it regards habits?

220 Has habit much influence over his body and mind?

221 What is our second general observation?

222 What two barriers hinder this from becoming an objection?

223 What can we learn from Scripture?

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\* Mark ix. 41. Luke xii. 47; xxi. 16. 2 Cor. ix. 6.

there can be little to choose between the worst man received, and the best man rejected. But may there not be as little to choose in their conditions?

This is not the place to anticipate the detail of Scripture morality. But the following positions may be here advanced with safety:

1. That a state of future happiness cannot be expected, except for conduct designedly or habitually prompted by regard to true virtue. For were it otherwise, the sanctions of morality and religion would possess neither use nor authority.

2. That a state of happiness cannot be expected by those who are in the habitual practice of committing one sin, or omitting one duty.

Because, 1. every command of God is equally binding; 2. by such allowance every sin would in turn be committed with impunity; and, 3. such laxity of morals is directly denounced by Scripture, where duties are recited\* collectively, and vices† disjunctively; thus proving that single virtues cannot gain, though single vices may lose, God's approbation. Nor can such expressions as "charity shall cover a multitude of sins,"‡ and, "he who converteth a sinner, shall hide a multitude of sins,"|| be reasonably extended to sins committed habitually.

3. That a state of mere unprofitableness will not go unpunished.

As this doctrine has been laid down expressly by Christ in the parable of the talents,§ all further reasoning is unnecessary; and it is only requisite to direct attention to the language adopted on the occasion, where the servant is censured for being "slothful," and ordered to be "cast out into outer darkness" as an "unprofitable servant."

224 What is the first general position of Scripture morality?

225 Why must that be the fact?

226 What is the second general position?

227 What three reasons are given for this position?

228 Are there any texts which seem to favor a contrary opinion?  
What is said of them?

229 What is the third general position of Scripture morality?

230 Who has taught this doctrine? Where?

\* 2 Pet. i. 5.

|| Matt. xxv. 14.

† 1 Cor. vi. 9.

§ James v. 20.

‡ 1 Pet. iv. 8.

III. In every question of doubtful conduct, we are bound to take the safe side.

Suppose, for instance, that it were doubtful, in the mind of a reasoner, whether suicide be lawful or not; still a man ought not to commit it, because he can have no doubt that it is lawful to let it alone. This, it is replied, is only the *prudent* side of the question, and does not touch the *legality* of the act. We assert, on the contrary, that the act is not lawful to the *reasoner*, so long as *he* may have any doubts of its legality. This is the decision of St. Paul\* on a similar case; and with that we may rest contented:—"I know that there is nothing unclean of itself; but to him that esteemeth it unclean, to him it is unclean. Happy is he that condemneth not himself in that thing which he alloweth."

231 What is the third general observation? Give an example.

232 Whose decision have we upon such subjects? State it.

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\* Rom. xiv. 14, and also 22, 23.

## BOOK II.

## MORAL OBLIGATIONS.

CHAP. I.—THE QUESTION, WHY IS A MAN OBLIGED ?  
CONSIDERED.

THE reasons assigned for this obligation, although various, ultimately coincide, whether founded on “right,” or “the fitness of things,” or “a conformity with reason and truth,” or “the promotion of public good,” or, lastly, on “obedience to God’s will.” The ultimate result in all cases is “happiness.”

For, by “the fitness of things” is meant their fitness to produce happiness ; by “the reason of things” is meant the principle by which is formed a judgment of the power of things to produce happiness, and “truth” is a result of this judgment. Hence, what promotes general happiness is agreeable to the fitness of things, to reason, and to truth. And, again, as “the will of God” requires only what promotes general happiness, whatever leads to that end must needs be “right;” by which term is merely meant a conformity with the rule of moral conduct, whatever that may be.

[On this subject Dr. Dewar has well said, “The will of God does not *create* moral distinctions, but is the *expression* of distinctions which eternally and unchangeably exist ; and which are founded in his own nature.” And again, “The distinctions of right and wrong are necessary, immutable, and founded in the nature of things.”—Book iii. chap. 4.]

But it may be asked, why is a man obliged to do what is

1 What are the several answers to the question “why is a man obliged” ?

2 What may be said of them all ?

3 What is meant by fitness of things ?—the reason of things ?

4 What is agreeable to all these ?

5 Does the will of God coincide with rule ? Why ?

6 What is the meaning of the term *right* ?

7 What does Dr. Dewar say of the will of God ?

8 What does he say of the distinctions of right and wrong ?

right, or suited to the fitness of things, or to nature, reason, and truth, or to promote public good, or to obey the will of God?

To answer this question, it is necessary to inquire, 1. What is meant by saying that a man is *obliged* to perform any act; and, 2. *Why* he is obliged to perform that act. And we will propose for example, the act of keeping his word.

CHAP. II.—THE MEANING OF THE WORD “OBLIGATION.”

[An obligation is “that which constitutes legal or moral duty, and which renders a person liable to coercion and punishment for neglecting it.”—*Webster*.]

A man is said to be obliged, when he is urged by a violent motive which results from the command of another.

The motive must be violent. For, if not, his acquiescence will be voluntary, and not compulsive; and consequently, there will exist no obligation to perform the act in question.

The act must be done at the *command* of another. For, if a man is actuated by the hope of a gratuity, he is not obliged, but induced or prevailed upon.

But as no command can be effective unless accompanied by the hope of reward for obedience, or the fear of punishment for disobedience; the obligation to do what is right is referred at once to the violent motives of expected pleasure or pain, which are to result from obedience or disobedience to the will of God.

[On this subject Mr. Stewart says, “The notions of reward and punishment presuppose the notions of right and wrong. They are sanctions of virtue, or *additional motives* to the practice of it; but they suppose the existence of some previous obligation.

“It is absurd, therefore, to ask, why we are bound to

9 After all the reasons that are given, what question may still be asked?

10 In order to answer this question, what two inquiries are necessary?

11 How does Dr. Webster define the word obligation?

12 When is a man said to be obliged?

13 Of what quality must that motive be?

14 What is the result called when the motive is not violent?

15 For what reason must the act be done?

16 What do we say of it if there is an expectation of reward?

17 To what motives is the obligation referred? Why?

18 What does Mr. Stewart say of these motives?



practise virtue ? The very notion of virtue implies the notion of obligation. Every being, who is conscious of the distinction between right and wrong, carries about with him a law which he is bound to observe ; notwithstanding he may be in total ignorance of a future state.”—*Outlines*. Part ii. chap. 1. sec. 6.]

From the preceding view of the question, it appears that when a man is said, in one case, to be induced to perform any act, and in another, to be “obliged” to perform it, we do not suppose that he is impelled by different kinds of motives ; but only if he is obliged, he is influenced by a strong inducement which results from the command of another. In like manner, an act of prudence differs from an act of obligation only in a degree still further removed ; for in the former, we consider what we shall gain or lose in this world ; in the latter, we think of the pleasures and pains of the world to come.

### CHAP. III.—THE QUESTION, WHY AM I OBLIGED TO KEEP MY WORD ?

To the question, “*Why* am I obliged to keep my word ?” the answer will be, Because I am “urged to do so by a violent motive,” (namely, the expectation of future reward if I do, and of future punishment if I do not ; ) and that “this motive results from the command of another ;” that is, of God.

This recurrence to the hopes and fears of a future state as the grounds of moral obligation, has been and may be still objected to, but to no purpose ; unless the objectors can show that virtue leads always to happiness here, or at least to a greater share than its opposite vice ever attains.

[Concerning these hopes and fears, a writer in Rees’s Cyclopedia says, “Here then we come to the ultimate, or (as we should prefer saying) the *remotest* obligation of vir-

19 Does he think one bound to do right, if he does not believe in a future state ! Why ?

20 Do we suppose the motives for inducement, and those for obligation to be different in kind ? How do they differ ?

21 How does prudence differ from obligation ?

22 Why am I obliged to keep my word ?

23 What is the motive ? At whose command is it ?

24 Are these motives agreed to by all ?

25 In order to dispose of them, what must the objectors show ?

26 What are these hopes and fears called in Rees’s Cyclopedia ?



tue; and from this point we shall proceed, till it appears that the end of human existence will be best answered by resting at a somewhat *nearer* and equally stable ground of obligation. And we cannot forbear observing, that it will clearly appear, from carefully considering the laws of our mental frame and the circumstances of mankind, *that the love of God, of man, and of duty*, (in other words, the affections of piety and benevolence, and a regard to conscience,) should be our primary aim, since he will be most happy, in whom those principles exist with the greatest strength and vigor.”]

Since, then, we cannot dispense with the doctrine of a future state of rewards and punishments, as the ground of moral obligations, we have to inquire,

1. If there be, in reality, such a state; and,
2. What actions will be rewarded, and what will be punished.

Of these questions, the first relate to the evidences for the truth of the Christian religion; the second to the detail of the code of Christian morality. Both questions are too much for one work; and the first is, therefore, taken for granted in the present treatise.

#### CHAP. IV.—THE WILL OF GOD.

As the will of God is our rule, the whole business of Christian morality turns upon our knowledge of what that will is; and that once known, our duty is known also.

Now the will of God is known, 1. By the express words of Holy Writ; and, 2. By such inferences as are drawn by the light of nature from the works of God.

When an ambassador has his instructions in his pocket, it would be strange if he did not look into them. When those instructions are clear and positive, there is an end to all deliberation concerning his duty. In the same manner, the Scriptures, as far as they go, must be our rule of conduct.

- 27 Should our actions be governed directly by them?
- 28 What should be our *primary* aim in our duties?
- 29 What two great inquiries are necessary to form a code of morality?
- 30 How is the first settled?—Of what does the second consist?
- 31 What is the whole business of forming a moral code?
- 32 What two means are there of knowing the will of God?
- 33 Give an example of the first method. What does it teach?

Thus religion, natural and revealed, go hand in hand ; and as the object of both is the same, to separate them is an absurdity ; since it matters not how we discover the will of God, if we only do discover it. Of the modern scheme of thus uniting ethics with Christianity, Hume and others have complained. But have the complainants been able to make any thing of morality without such union ? The ninth section of Hume's Treatise on the Principles of Morals contains the practical application of his system. Let any one read it, and say whether the motives there proposed are sufficiently "violent" to correct the bad passions of our nature. If not, the reader will see, with us, the necessity of stronger motives. But this is not the present question. For if Christianity be true, there is a state of future rewards and punishments ; and such motives cannot be neglected ; least of all by a Christian moralist, who should leave to those who reject the Scriptures, to build up, if they can, morality without their aid.

Where the Scriptures are silent or dubious, we must resort to the light of nature. The method of discovering the will of God by the light of nature, is only to inquire into the tendency of any act to promote or diminish general happiness. For as this rule rests on the presumption that the Creator wishes the happiness of his creatures, such actions as promote such wishes must be agreeable to him ; and *vice versa*.

On this presumption our whole system rests. The reasons, therefore, on which it rests, must be explained.

#### CHAP. V.—THE DIVINE BENEVOLENCE.

When God created mankind, he wished either their happiness or their misery, or he was unconcerned about both. Had he wished the misery of man, he would have made all the present sources of pleasure sources of pain. Had he

34 What is mentioned as an absurdity ? Why ?

35 Do those moral treatises which discard the Scriptures prove to be effectual ?

36 But can a Christian moralist neglect them ?

37 When must we resort to the light of nature ?

38 How shall we discover the will of God by that ?

39 Upon what presumption does this rule rest ?

40 What may be said to be the mind of the Creator when he made man ?

41 Suppose he had wished the misery of man ?

been indifferent to the happiness or misery of man, the capabilities for pleasure and pain must have been the result of accident; for all design is, by the supposition, excluded. But as accident could not have fitted all objects to the senses, so that the one should impart and the other receive uniformly corresponding impressions, the supposition of accident must be excluded. Consequently, God must, when he created man, have wished his happiness, and made provision accordingly.

Again, contrivance proves design; and the tendency of the contrivance indicates the intention of the designer. The world abounds with contrivances directed to purposes of good. But though evil exists, it is not the design of the contrivance. Teeth are contrived for the purpose of eating, yet they ache; but their aching is not the design of the contrivance, but incidental to it. Even, for the sake of argument, we will admit it is a proof of defective contrivance. So, in the case of human instruments, a sickle is contrived to reap corn; and though from its form it occasionally cuts the reaper's fingers, such is not the design of it, but an accident from its use. On the other hand, instruments of torture are contrived with the design of giving pain. Nothing similar to this is found in the works of God. No anatomist, for instance, ever discovered any organ in the body, whose design could be shown to be only the infliction of pain; nor does he, if he meets with a part whose use he knows not, even suspect that its design is to annoy. Since, then, contrivances indicate that God designed man's happiness, and as there are no proofs of any change in such design; we must in reason believe in its continuance.

Although a view of universal nature is apt to bewilder the mind, there is, however, always one bright spot in the prospect, on which the eye rests with complacency; and thus a

- 42 Suppose he had been indifferent? Is this reasonable?
- 43 What follows from rejecting these two suppositions?
- 44 What other argument is there?
- 45 What is the purpose of the divine contrivances?
- 46 Is evil one of their designs? Give an illustration.
- 47 What is said of human instruments when intended for good, and when intended for torture?
- 48 What is said of the anatomist?
- 49 What conclusion follows from this?
- 50 Does the eye judge best when looking upon a whole prospect or on a single spot in it? What is compared to this?

single example will produce a conviction which many united would fail to effect. To me it seems that the benevolence of the Deity is more clearly seen in the pleasures of children than in any thing else. The pleasures of grown persons are the result of their own seeking, by the cultivation of talents aided by accidental circumstances; but those of a healthy infant are so evidently furnished by the hand of *another*, that the sight of a child at play affords to me sensible evidence of the intentional benevolence of the Deity.

Having thus proved that the Creator wished and still wishes the happiness of his creatures, we proceed to investigate the rule built upon such fact, that "the method of knowing God's will as shown by the light of nature, is to inquire into the tendency of any act to promote or diminish general happiness."

#### CHAP. VI.—UTILITY.

Actions, then, are to be estimated by their tendency.\* Whatever is expedient is right; and the utility of a moral rule constitutes its obligation.

[Dr. Dewar remarks on this assertion, "Though we admit that utility be the rule by which the Deity conducts his government, it is a rule utterly unsuited to man. How can he, with his limited faculties, and with his comparative ignorance of the nature and qualities of beings, and the tendency of actions, be capable of making expediency the law of his conduct? It is only for Him who sees the end from the beginning, to know all the consequences of a single action, and to determine the way in which the good of that

51 What example was most evident to Dr. Paley?

52 What is proved from the foregoing?

53 What rule is built upon this fact?

54 How are actions to be estimated?

55 What constitutes the obligation of a moral rule?

56 What does Dr. Dewar say of utility? Why?

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\* Actions in the abstract are right or wrong, according to their tendency; the agent is virtuous or vicious, according to his design. Thus, if the question be, Whether to relieve common beggars be right or wrong, we inquire into the tendency of such a conduct to public advantage or inconvenience. If the question be, Whether a man, remarkable for this sort of bounty, is virtuous for that reason, we inquire into his design, whether his liberality springs from charity or from ostentation. *Our* concern is with actions in the abstract.



universe which he has formed shall be secured.”—Book iii. chap. 6.]

[But Mr. Dymond well says, “It may easily be shown that regard to utility is recommended or enforced in the expression of the divine will. That will requires the exercise of pure and universal benevolence; which benevolence is exercised in consulting the interests, the welfare, and the happiness of mankind. It is the use of reason to discover what is useful and expedient for these ends; and to say that to consult utility is right, is almost the same to say it is right to exercise our understandings. It is obvious that in this view, a reference to expediency is consistent with the will of God; and in conforming to it, so long as we hold it in subordination to his laws, we perform his will.”]

[It is plain that Dr. Paley, in this part of the work, really intended to teach that utility was subordinate to the Scriptures; as in chapter iv. he says, “Where the instructions are clear and positive, there is an end to all deliberation.” Whether the same opinion is manifested in the succeeding part of his work is another question.]

But to the maxim of utility, it may be objected, that many acts which are useful in themselves are decidedly not right. For instance, it might be useful that a possessor of a great estate, who abuses the influence of his property, should be murdered, and a better owner put in his place; it might be useful to rob a miser, and to give his money to the poor, whose quantity of pleasure by such acquisition would be greater than the pain of the miser from his loss; it might be useful to obtain political power through perjury, with the view to advance the good of the state. Must we, then, justify assassination, plunder, and perjury, on the ground of utility? or must we give up our principle that utility is right? Neither is necessary. The true answer is, that such acts,

57 What does Mr. Dymond say to this rule?

58 What is required by the will of God?

59 How do we find what is expedient for these ends?

60 What follows from this?

61 What is his conclusion upon this subject?

62 Is not this the intention of Dr. Paley?

63 What objection may be urged against the doctrine of utility? Give some examples.

64 What question is asked from these examples? What is its true answer?



though in appearance useful, are really not useful; and on that account alone are wrong.

The consequences of actions are twofold, particular and general. The former refers to the mischief produced by an action, taken singly; the latter to the mischief produced by the violation of a rule generally useful.

Thus, for instance, the particular mischief produced by the murder would be the loss of life, as dear to a bad as to a good man; while the general mischief produced, is the violation of the law against murder.

Hence, although in such murder the particular good might outweigh the particular evil, yet it would not be useful, because it would produce a general mischief; and so of the cases of robbery and perjury above stated.

But as this decision presupposes the necessity of general rules in morals, such necessity must be demonstrated.

#### CHAP. VII.—THE NECESSITY OF GENERAL RULES.

Acts of the *same* kind cannot be partly permitted and partly forbidden. They must all be embraced under one general law; and the evidence, which proves that the universal permission of them is injurious, is the ground of the law which *forbids* them *all*.

Thus, in the case of the murder before spoken of, should the assassin say he killed the rich rascal, because he thought his life pernicious; such a plea, if admitted in this case, must be admitted in all similar cases. And the consequence would be general mischief, by putting the life of any man in the power of his neighbor.

The necessity, then, of general rules in human government is apparent. But must the Deity also regulate future rewards and punishments by general rules? Yes. Because, as every government, whether human or divine, intends to

65 How many classes of consequences result from actions, and what are they? 66 Describe the particular. Describe the general.

67 What is the particular bad consequence of murder?

68 What are its general mischiefs?

69 Which class of consequences determines the morality of an act?

70 Upon what is this decision founded?

71 What is said of all acts that have a common tendency?

72 What follows from proving the pernicious effects of permitting all of them? Give an example.

73 What is rendered apparent by this?

74 Will this necessity extend to the divine government? Why?

influence the conduct of reasonable beings; if two similar acts be not similarly treated, the consequence of such neglect of general rules would be, that mankind would no longer know what to expect, or how to act. Rewards and punishments, distributed at random, might, like a blank or a prize in a lottery, bring pain or pleasure for the moment; but, from the uncertainty of the event, could produce no influence on the conduct.

Hence, if there is to be a distribution of future rewards and punishments, such distribution must proceed on general rules.

But it will be said, that on this system of general consequences, the guilt of a bad action consists in the example; and consequently, if the act be done in secrecy, since it furnishes no bad example, part of the guilt drops off. In the case of suicide, for instance, if the act be done so that none can know or suspect it, the example can do no mischief; nor can a punishment for this deed be necessary merely to save a general rule from an exception.

But such reasoning, if adopted, would introduce a rule the least to be endured; namely, that secrecy can justify an act. Besides, there would be reason to fear that people would be disappearing perpetually.

But before this plea of secrecy can be admitted, we ought to be satisfied respecting the following queries—

1. Whether the Scriptures do not teach us that the most secret actions will be brought to light.\*

2. Whether such acts will not be the objects of future rewards and punishments.

3. Whether they will not, when brought to light, be treated, like other acts, by general rules.

75 Without general rules, what would be the effect of rewards and punishments? What does this argue?

76 What circumstances have been thought a palliative in crime? What is the example?

77 What principle would result from this reasoning? What else would it lead to?

78 How do the Scriptures affect this argument? [*The pupil should, in all examples like this, be able to recite the passage.*]

79 Why will those acts be brought to light? How will they then be treated?

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\* Rom. xi. 16. 1 Cor. iv. 5.

## CHAP. VIII.—ON GENERAL CONSEQUENCES.

It has been said that the general consequences of an act may be known, by considering what the consequences would be if it were generally committed. But to this it has been objected, that the guilt of one act cannot justly be charged with the accumulated guilt of many similar acts. We reply, that the reason for prohibiting the act, and the measure of its guilt, is in proportion to the mischief which would arise by the general allowance of actions of the same sort. Whatever is expedient, is right. But then its expediency must be seen in all its ramifications, direct and remote. By this habit of viewing the consequences of single acts, the intensity of crimes apparently insignificant is best seen, and the severity of laws, apparently inhuman, fully justified.

For instance : in coining or forgery, the particular mischief is the trifling loss of the sum to the person who received the counterfeit money or forged paper ; the general mischief would be to abolish the use of money or of paper in commerce.

In sheep or horse-stealing and burglary, the particular mischief is the loss of the sheep, or horse, or chattels, to its owner ; the general mischief would be the insecurity of any property necessarily exposed.

In smuggling, the particular mischief is the trifling loss to the revenue from the duty unpaid ; the general mischief would be the ruin of more honest traders in the same article who had paid the duty.

In a captive's breaking his parole, the particular evil is his escape ; the general consequence of the act is the refusal of the indulgence of a parole to other captives.

Hence, in many cases, the punishment for two different commissions of a similar crime is the same, although the individual injury done be not the same. For the general con

80 How may we estimate the general consequences of an act ?

81 What objection has been brought against this ? How is it answered ?

82 In what respect must an action be expedient ?

83 What will this habit of viewing consequences lead to ?

84 Give the example in counterfeiting or forgery. In stealing, and in breaking into an uninhabited house. In smuggling. In parole breaking.

85 What principle in human laws does this explain ?

sequences may be the same from any two acts that differ only in degree.

From the want of this distinction between a particular and a general consequence, the ancient moralists have been compelled to introduce a new rule of conduct, designated *tò prepon*, or *honestum*; by which they meant a measure of right distinct from utility. While the principle of *utile* corresponded to their notions of rectitude, they went by it; but when that failed, they resorted to the other, *honestum*; and the only account they could give of the matter was, that acts similar to those detailed in chap. vi. might be useful; but as they were not also *honestæ*, they were not to be deemed right.

There is a maxim in every body's mouth, and in most men's without meaning, "not to do evil, that good may come." The caution not to do a particular good through the violation of a general rule is salutary; for the good would seldom balance the evil. But strictly speaking, if good comes, evil cannot, except as we have shown in the preceding views of particular and general consequences. To this it may be added, that if an act produces little effect as regards the many, so will the punishment of such act be little as regards the quantity of general misery.

#### CHAP. IX.—OF RIGHT.

Right and obligation are reciprocal. Thus, if one man has a "right" to an estate, others are "obliged" to yield it up; or if parents have a "right" to respect from their children, the children are "obliged" to pay it.

Now as moral obligation depends on the will of God—"right," the reciprocal to it, must depend on it also, and means, therefore, "consistency with the will of God."

But if "right" be only the will of God, how can we conceive that his acts, which are merely a manifestation of such

86 What perplexity has been occasioned by the want of this distinction?

87 When was the rule of *honestum* brought in?

88 How did they account for it?

89 What is said of the maxim, not to do evil that good may come?

90 What reflection is added to these remarks?

91 What is said of right and obligation? Illustrate.

92 To what doctrine concerning *right* will this fact lead?

93 What question will this give rise to? How is it answered?

will, can be "wrong?" The answer is, that from the two principles,—that God wills the happiness of his creatures, and that his will is the measure of right,—we form in our minds certain *rules* of right and wrong, which we habitually apply to all acts, and finally even to those of the Deity himself; because at the time of the application we do not perceive that such rules are deduced from the Divine will itself.

Right is a quality of persons or of acts; of persons, as of a man who has a right to an estate, or of one who has not the right over his own life; of acts, as of a state which has a right to punish murder by death, or of one which has not the right to punish a debtor by imprisonment. In the latter case, the definition which we gave above can be substituted directly for the term "right;" as it is "right," or "consistent with the will of God," to punish murder with death. But when we speak of persons, the substitution is imperfect. Thus, in the expression, "a man has a right to an estate," we can only mean, "it is not inconsistent with the will of God" for such a man to have the estate in question.

#### CHAP. X.—THE DIVISION OF RIGHTS.

The rights, of persons are, I. Natural or adventitious; II. Alienable or inalienable; III. Perfect or imperfect.

I. Natural rights are such as would belong to man not in a state of society; adventitious are such as belong to man in a state of society.

Natural rights are a man's right to life and liberty, to the use of his limbs and the produce of his labor, and to the enjoyment of air, light, and water; for if any number of men were cast together on a desert land, they would all be entitled to these rights.

Adventitious rights belong to a state of society which possesses the right to make any and all laws for the regulation of such society; none of which would exist in a newly inhabited island.

94 Of what is right a quality?

95 Explain it as a quality of persons. Of actions.

96 When the term right is a quality of acts, what phrase may we use instead of it?

97 How must the phrase be varied when speaking of the rights of persons?

98 Of how many classes are the rights of persons?

99 What is the difference between natural and adventitious rights?

100 Give a few examples of natural rights. Of adventitious rights.



But how can adventitious rights be created by man, if right itself depends only on the will of God? This question may be answered by appealing to the principle, that God wills the happiness of mankind. Consequently, acts, which lead to happiness in a social state, are right, although, as they do not produce the same effect in a state not social, they would, out of civil society, be wrong.

Hence, adventitious rights, made by men, are not less sacred than natural rights, ordained by God; for both rest on the same foundation,—the will of the Creator. Hence, it would be no less sinful than it is illegal, to dispossess a man by violence of an estate for which he can show as a title the right of law; although he cannot, as the twelve tribes could do, assert his claim to it as a gift from God.

II. Rights are alienable or inalienable; i. e. can or cannot be transferred from one person to another.

The right possessed over things is alienable; over persons, inalienable. A man may transfer his cattle, for instance, to another, but not his wife. Thus, too, he may transfer his right to his own liberty, but not his right over the liberty of other persons.

III. Rights are perfect or imperfect.

Perfect rights can be asserted by personal force, or the force of law; imperfect cannot. For instance, a man may *resist*, by personal force or by the law, violence done in his own person, or in the destruction of his house; and can *compel* by law the restitution of an estate, or of portable goods, injuriously taken from him. On the other hand, imperfect rights cannot be enforced. For instance, a poor man has a right to relief; yet if it be refused, he must not extort it. Children have a right to affection and care from their parents, and parents from their children; yet if the rights be withheld on either side, they cannot be recovered compulsorily.

But it may be asked, how can a person have a right to a thing, and yet want the right to use means to obtain it?

101 What question naturally arises concerning adventitious rights? How is it answered?

102 What authority does this answer confer upon adventitious rights?

103 Give an example.

104 What is the difference between alienable and unalienable rights?

105 Give an example of their application.

106 What is the difference between perfect and imperfect rights?

107 Give an example of perfect rights. 108 Of imperfect rights.

109 What difficulty attends the doctrine of imperfect rights?

The answer is by referring here, as elsewhere, to the principle of the general rule, which forbids the use of force for the attainment of an object in itself indeterminate, through the fear of the consequence it would lead to, by the introduction of force in cases where no right existed. For instance, a candidate, the best qualified, has a right to success; but as the qualifications are of an indeterminate nature, there must be some person to determine them before he can demand success by force. Now such person cannot be the candidate himself, or any of his party, unless we extend the same allowance to other candidates. If we do that, *all* would resort to compulsion. In like manner, although the poor man has a right to relief, yet as the mode, time, and quantity of the relief are circumstances not ascertained, the relief must not be prosecuted by force. For to allow the poor to judge for themselves in such cases, would lead, as a consequence, to the general insecurity and loss of property.

Where the right is imperfect, so is the obligation; for the terms are, as shown before, reciprocal.

Obligations are here called imperfect, because they are called so by other writers. The term is, however, ill chosen; for it leads to the notion, that there is less guilt in the violation of an imperfect obligation than of a perfect one; which is a groundless opinion. For the degree of *guilt* is determined by circumstances unconnected with the distinction between a perfect and imperfect obligation; that distinction being used merely to determine, whether violence may or may not be used to enforce the obligation. He who discourages a worthy candidate commits a greater crime than he who picks a pocket; although, in the former case, he violates an imperfect, but, in the latter, a perfect obligation.

As positive precepts are often indeterminate, and as the indeterminateness of an obligation renders it imperfect, positive precepts can merely produce an imperfect obligation; and, contrariwise, negative precepts, being precise, constitute perfect obligations. The fifth commandment is positive, and its duty is imperfect; the sixth is negative, and its

110 How is it solved? Illustrate by example.

111 Of what kind is the obligation when the right is imperfect?

112 Is that a well chosen term? Why is it used?

113 What opinion does it lead to? Is that correct? Why?

114 What precepts produce imperfect obligations? Why?

115 Do negative precepts have the same effect? Give examples.

duty perfect. Religion and virtue find their voluntary exercise among the former; the laws of society compel the exercise of the latter.

## CHAP. XI.—THE GENERAL RIGHTS OF MAN.

These rights, belonging collectively to the species, are—

## 1. To the fruits of the earth.

The insensible parts of the creation are incapable of feeling hurt; and as God has given to man both the desire of food and the means of obtaining it; he, of course, intended us to use the fruits of the earth as food.

## 2. To the flesh of animals.

This is a different claim; and, as a reason is necessary for depriving animals of their liberty and life, and for inflicting pain, to gratify the appetite; it has been said,—1. That as brutes prey on each other, so man, a species of brute, only obeys the general law in preying on other brutes. 2. That if animals were not destroyed by man, they would overrun the earth, and drive man from the occupation of it. But, first, the analogy between man and brutes is not correct. Carnivorous brutes cannot live by other means, man can; and, as in the case of the Hindoos, actually does live without tasting flesh of any kind. Secondly, the calculated increase of animals would not take place naturally; since many are forced into existence for the express purpose of subsequent destruction. Besides, as in the case of fish, how is man's occupation of the earth endangered by their unlimited increase? The only real defence of such a right is in the permission granted by God to Noah, in the words, "every moving thing shall be meat for you; even as the green herb have I given you all things;"—which last alone was included in the original grant to Adam, in the words—"every green herb shall be meat for you." But although this extension of the grant over the beasts of the earth, the fowls of the air, and fish of the sea, did not take place till

116 What motives induce the fulfilment of either kind of obligations?

117 What is meant by general rights?

118 What is the first general right? How proved?

119 What is the second general right? Is it evident?

120 What two reasons are given in vindication of it?

121 What is observed of the first reason? Of the second?

122 Where is our only permission of that right?

123 Was this given in the time of Adam?

after the flood, we are not told whether the antediluvians refrained or not from the flesh of animals. Abel, we read, was a keeper of sheep; but for what purpose, except for food, it is difficult to say, unless it were for sacrifices. If so, it is probable that Noah, with some other antediluvians, was scrupulous on this point, and consequently received a permission to do what he previously deemed sinful; for God would not have given as a new grant, a permission to do what had been practised long before without dispute. But even such a permission to destroy will not warrant the liberty of studied or wanton cruelty to brutes.

From reason, then, and revelation, it appears that God intended the fruits of the earth for man's support; but as he did not intend any waste or misapplication of those productions, such acts are, like others more expressly mentioned, wrong, as contrary to God's will. Hence, the conversion of corn-fields into parks for deer, or covers for foxes; the non-cultivation of lands by parties in possession, or the refusal to let them to those who will cultivate them; the destruction or waste of food with the view to increase the price of stocks on hand; the expending on superfluous dogs and horses the sustenance of man; or the conversion of grain into ardent spirits. These, and, in short, all acts, by which the food of man is diminished either in quantity or quality, are sinful, as opposed to God's desire for the happiness of his creatures.

This lesson Christ probably intended to inculcate, when he bade his disciples gather up the fragments, that nothing might be lost: and this lesson men ought to bear in mind, when scheming plans for their own individual advantage; as they are apt to forget that it is their duty to obtain the greatest quantity of food from their estates, and that not to do so is a sin.

From the same view of the intentions of the Deity, we

124 Might it not be allowed without being incorporated with Scripture history?

125 With that supposition, what is the probable reason that the permission was given to Noah?

126 What are we taught concerning the fruits of the earth?

127 What would oppose such intentions?

128 Give a few examples.

129 What would be the nature of such acts?

130 What negligence would this lesson reprove?



prove that nothing ought to be exclusive property, that can be enjoyed in common. For example, two or more persons, thrown on a desert island, find an apple-tree loaded with fruit: each may take enough for his own immediate use, and every one plead the general intention of the Supreme Proprietor. But none can claim the whole tree; for it must be previously shown that God intended the tree to be given to one or a few individuals. Now this intention can be proved only by showing that the fruit cannot be enjoyed with the same advantage when distributed to all, as when confined to one or a few. But this will be true only, when there is not enough for all, or where the article in question requires labor for its preservation and production. But where no such reason obtains, it is an usurpation of general right to confine the use to one or to a few.

If a medical spring, sufficient to supply all who wished to use it, were discovered on ground belonging to an individual; the owner of the ground, and the discoverer of the spring, if it was found by laborious search, may merit compensation and reward; but no human law would justify the owner in confining to himself the use of God's general gift. In like manner, all attempts to appropriate inexhaustible fisheries to individual nations is an encroachment on the general rights of man.

On the same principle may be settled the contested question, whether the sea be free or not? What is necessary for each nation's safety may be allowed, even to the extent of three leagues from the coast; a limit far beyond the reach of any implements of war, by which the safety of the coast might be endangered.

3. The last universal right is the right of necessity; that is, the right to use or destroy another's property, when it is necessary to do so for self-preservation. For instance, to take, without the leave, and against the consent of the owner, goods or chattels, when we are in danger of perishing through want of them; a right to throw goods overboard to save a ship from sinking, or to pull down a house to stop the

131 What seems to be another intention of the Deity?

132 When can a reason be given to show that this is not his intention?

133 What is said of a medicinal spring?—of fisheries?—and of the sea?

134 What is the last universal right?

135 What is meant by that right? Give examples.



progress of a fire. This right is founded on the principle, that the institutions relating to property were intended to benefit all, even if it should happen to be at the expense of a few ; and, consequently, the partial mischief resulting from the violation of a general rule is overbalanced by the immediate advantage. Restitution, however, is due, not to the full value of the property so destroyed, but to the value which it possessed at that time ; and as it was in danger of perishing, that value might be but little.

136 On what is this right founded ?

137 But what should always follow such destruction ?

138 What amount of restitution would be due ?

## BOOK III.

## RELATIVE DUTIES.

## CHAP. I.—ON PROPERTY.

IF you should see in a field of corn a flock of pigeons, all of whom, save one, were engaged, not in choosing for themselves the best food, but the worst, and reserving the best for that single pigeon, the weakest and perhaps the worst of the flock ; and if, while that single pigeon was devouring or wasting at pleasure, you should see, when another hungry and hardy pigeon touched a grain of the hoard, all the other pigeons fly on the intruder, and peck it to death ; you would then see nothing more than what is practised every day among men. In civilized society, many persons toil to find superfluities for one, sometimes the least deserving of his species ; and in the mean time get for themselves only the worst and smallest share, and quietly look on, while they see the fruits of their labor spent or spoiled by that single one or his minions. They will even join to hang a man, whose necessities may have led him to take the smallest particle from the hoard so unequally distributed.

## CHAP. II.—THE USE OF THE INSTITUTION OF PROPERTY.

This institution, which, from the view just given of it, seems so unnatural, still possesses advantages enough to counterbalance its apparent absurdity. The principal advantages are the following.

1. It increases the produce of the earth.

In climates where the earth produces little without labor, no one would sow if all might reap. Hence, the spontaneous productions of the earth, such as acorns, berries, game, and fish, would be the only food of its inhabitants ; and a handful of men would thus starve on waste lands

1 Illustrate the distribution of property by an example.

2 How is the example applied ?

3 What is said of the institution seemingly so unnatural ?

4 What is the first advantage ? Why so ?

5 What would follow from not cultivating the earth ?

which, if cultivated, would feed thousands. In soils naturally fertile, or on coasts where fish abound, and in climates where clothes are unnecessary, a large population may subsist without property in land; but in less favored spots, the want of food arising from the want of institutions to secure property, leads people even to devour each other.

II. It preserves the produce of the earth to maturity.

If, under a system which is intended to be favorable to the security of property, we find the fruit of a tree which is exposed to depredation always plucked before it is ripe; it is fair to infer that, where there is a community of property, corn, if sown, would never be permitted to come to maturity, nor would lambs and calves grow up to sheep and cows; because each would think he had better take what he could get, than leave it to another to enjoy.

III. It prevents contests.

Where there is not enough for all, and where no rules exist to settle the share of each, it is plain that contests alone can regulate the distribution.

IV. It improves the conveniences of life.

As each man is secure in the produce of his own labor, he is enabled to direct his attention to a particular art, and to exchange the productions of that art for those of another. Thus is introduced the subdivision of labor, by which each man becomes a proficient in his own art, which he could not be, if his time were taken up by all the different occupations necessary to his subsistence. By this arrangement, articles of necessity and ornament are improved in their manufacture; and as new wants are created, fresh exertions are made and remunerated; so that they, who are the worst off where the laws of property prevail, are better off than the best are where all things are in common.

6 Where would this state of things be not disadvantageous?

7 What has it led to in some situations?

8 What is the second advantage?

9 By what example is this proved? What inference from it?

10 What is the third advantage?

11 Would there be contests if there were no right to property?

12 What is the fourth advantage?

13 What preliminary step for that does it occasion?

14 What does the entire attention to one art occasion?

15 What is the result of this arrangement?

16 Then what opinion may we form concerning those who are subject to the institution of property?

The great inequality of property which is found in civilized nations, abstractedly considered, is an evil ; but it is an evil which flows from a greater good ; and is to be rectified only when it is unconnected with such good.

#### CHAP. III.—THE HISTORY OF PROPERTY.

The first objects of property were the fruits a man gathered, and the animals he caught ; then the hut he built, and the tools and weapons he made ; and, subsequently, his flocks and herds. Even Abel, the second from Adam, was a keeper of sheep, which, with oxen, asses, and camels, composed the wealth of the patriarchs, as they now do that of the Arabs. The next object of property was probably a well of water ; which, in the countries of the east where the world was first peopled, was from its value a source of frequent contentions ;\* and to dig or discover one was deemed an act worthy of honorable record. Land, at present so important as to be alone called real property, was, when more plentiful, little thought of ; but as the people increased, and tillage was resorted to, it rose in value. The first partition of an estate on record is that which took place between Abram and Lot ; and the terms of it are the most simple : “ If thou wilt take the left hand, then I will go to the right ; or if thou depart to the right hand, then I will go to the left.”

There are no traces of property in land in Cæsar’s account of Britain ; little in the history of patriarchal times ; and none of it is found amongst the savages of America or of Australia. Even the ancient Scythians, who appropriated houses and cattle, are expressly said to have left their lands in common.

Even for some time property in immovables was confined to temporary occupancy : for as soon as a man quitted his hut or cave, and the feeding ground of his cattle ; another entered on them by the same title as his predecessor. It is probable that a permanent property in lands, not cultivated by

- 17 What is our final opinion of inequality of property ?
- 18 Mention the first objects of property, one after another.
- 19 What was the next object of property, and why was it made so ?
- 20 What is said of land ? What is the first partition of land ?
- 21 In what history are there no accounts of landed property ?
- 22 What was the tenure of property in immovables originally ?

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\* Gen. xxi. 25 ; xxvi. 18.

the resident proprietor or his agents, was first settled by the laws of the people, or the will of the ruler alone.

CHAP. IV.—IN WHAT THE RIGHT OF PROPERTY IS FOUNDED.

To explain the right of property in land, consistently with the law of nature, is no easy task : for as the land was once common to all, by what right could any part of it be taken by one person, to the exclusion of all others ?

Many different and consequently unsatisfactory reasons have been given.

One says that the right of the first possessor rested on the tacit consent given by his contemporaries to such possession, which consent, being once granted, could not be revoked by the relinquishing parties.

But consent cannot be presumed from silence, where the party said to be consenting knows nothing of the matter in question. It is true, the parties in the neighborhood of the spot where such appropriation took place, might have consented : but that very consent is as much an infringement on the general rights of mankind as the occupancy of the individual himself ; and cannot bind other portions of mankind who are ignorant of such transactions between the appropriator and his neighbors.

Locke says, that the right to property rests on the natural right of a man to the produce of his own labor ; for by cultivation consequent on the occupancy, the labor bestowed on the soil is so mixed up with it, that the man cannot be deprived of one without the loss of the other which is manifestly his own.

But this reason will hold good only where the value of the labor gives nearly the whole value to the ground ; as in the case of a waste, which a man should pare, burn, and plough for the growth of corn not previously produced ; or where the labor confers the greatest part of the value, as in the case of

23 How did such property first become permanent ?

24 What is said of the right of property in connection with the law of nature ?

25 Has there ever been any explanation ?

26 What is the first account of it ?

27 What is said of this reason ?

28 What reason is given by Locke ?

29 When is this reason applicable ?



game or fish, which, till caught, are of no value to anybody. But the right to possess, founded on the labor bestowed, can give no right to the possession of a tract of country as is claimed by discoverers, or to the fencing in of a piece of ground for a cattle pasture, or to hold in perpetuity even a farm when the cultivation and its effects shall have ceased.

Another and better reason is, that, as God has provided the ground for all, he has given leave to any to take what he pleases, (if not previously possessed,) without any kind of consent from others.

But this permission can apply only to so much as would yield the necessities of life ; and not to any superfluous wealth which may be enjoyed by the individual, at the expense of others, who, by such appropriation, may be pinched for food.

Such are the reasons usually assigned ; but were they perfectly unexceptionable, they would scarcely vindicate the present claim to a right of property in land, unless it were also shown that the possession did actually take place in some of the ways here supposed, and that justice has been done in every subsequent transmission. For if one link in this evidence fail, no title posterior to such failure can be held to be good.

The real foundation of our right is the law of the land. God intended the earth for man's use. This intention cannot be fulfilled without establishing property : he therefore *willed* the institution of property. But such institution cannot be effected, if the law of the land does not regulate the distribution ; consequently it is "right," or consistent with the will of God, for any individual to possess as much as the law of the land gives him. And, consequently, as the right does not depend on the manner or justice of the original acquisition, nor its subsequent transmission ; so neither can it be taken away for any defect in the title which is not cognizable by law.

30 Is it suited to every case ?

31 What better reason has been given ?

32 How far will this apply, and how far will it not ?

33 How far will all these reasons affect our present claims ?

34 What is the real foundation of our right in landed property ?

35 In our argument for this, what do we suppose to be the intention of the Deity ?

36 After supposing this, mention the train of reasoning that shows our right to be perfect ?

37 What follows from this proof ?

Nor does the owner's right depend on the *expediency* of the law. An estate on one side of a brook may descend to the eldest son, on the other side to all the children conjointly. The claims of both inheritances are founded equally in law, though the expediency of the law itself cannot be the same in both cases.

But it will be said, that as the right of property depends only on the law of the land, a man may rightfully keep whatever the law will not compel him to restore; and by this rule, since, in some states, if a debt be not demanded for six years the law exonerates the debtor, he is not bound in duty to pay it; or if a minor contracts a debt which the law will not compel him to pay, he is not only legally but morally relieved from paying it.

The answer in this and similar cases, is that no rule of law, intended for one purpose, is to be applied to another. For instance, this limitation of time was intended to protect men from demands so antiquated that the evidence of their discharge was probably lost. If then a man be ignorant or doubtful on this point, he may with strict justice plead in bar the legal limitation, but not, if he knows the debt to be undischarged; because in the one case he does, in the other does not, apply the law for the purpose for which it was intended. Again, in the case of the minor, the limitation of the law was intended to guard the inexperience of youth against impositions. If, therefore, a minor has contracted a debt, which carries with it the suspicion of imposition on the part of the creditor, he may justly plead his minority; but not so, if there be no such ground of objection.

As property is the principal subject of "the determinate relative duties," it has been first discussed. From these we proceed to

#### CHAP. V.—PROMISES.

1. Whence the obligation to perform promises arises.
2. In what sense promises are to be interpreted.
3. In what cases promises are not binding.

38 What effect upon the owner's right has the utility of the law? Give examples.

39 To what conclusion would this lead at first thought? Examples.

40 What is the application of such laws?

41 What are the three subjects of debate in the article of promises?

I. The advocates of a moral sense suppose the obligation to keep promises an innate sense: but, as this is disputed, we may easily deduce the necessity of the obligation from its utility.

Men act from expectation, which is generally determined by the assurances of others. Unless, then, such assurances are certain, the conduct which they regulate must be uncertain also. To prevent, therefore, the dependence of conduct on chance, a confidence in promises is essential to social intercourse. But there would be no confidence in promises, unless men were obliged to perform them. The performance, therefore, being essential to general happiness, becomes an obligation.

But it has been said, that if promises were never kept, a general distrust would take place equally useful. But this has been said by those who do not perceive how much in every hour man must and does trust to others. On the strength of such confidence each man regulates his actions; and the very dinner we eat depends on the trust we repose in the butcher to send the meat as ordered in, the cook to dress it, and the servant to put it on the table by a stated time. And so in the most important events of life, the intervention of promises and the necessity of keeping them, are really not greater than in these familiar occurrences, though the accidental circumstance of form causes them to appear so.

[On this subject Mr. Dymond says, "Doubtless fulfilment is expedient; but there is a shorter and a safer road to truth. To promise and not to perform, is to deceive; and deceit is peculiarly and especially condemned by Christianity. A lie has been defined to be 'a breach of promise;' and since the Scriptures condemn lying, they condemn breaches of promise."]

II. In what sense promises are to be interpreted.

Where a promise admits of more interpretations than one,

42 Whence arises the obligation to perform promises?

43 What is the first proposition towards the proof of this? What next?

44 What does this show to be essential? And in what only way can it be obtained?

45 How may some suppose that expediency might lead to the contrary? 46 What answer may be given to this?

47 What does Dymond say of this obligation?

48 In what sense are promises to be interpreted?

it is to be performed “in the sense in which the promiser apprehended that the promisee received it.”

The sense which the promiser actually intended to *act by*, cannot always govern the interpretation of an equivocal promise; because, at that rate, the promiser might raise *expectations* even intentionally, which he would not be under obligation to satisfy. Much less can it be the sense in which the promisee actually received the promise; for then the promiser might be drawn into engagements which might never enter his mind. It must, therefore, be taken in the remaining sense, viz. that in which the promiser believed the promisee accepted it. It is evident that this last sense will always agree with the intention of the promiser, except where a collusion is intended through the equivocal nature of the words of the engagement.

Temures promised the garrison of Sebastia, that if they would surrender, *no blood should be shed*. The garrison surrendered, and Temures buried them all alive. But although the agreement was kept literally, still as it was not kept in the sense in which Temures knew the garrison received it, he was guilty of a breach of promise.

Since, then, the obligation to perform a promise depends on the expectation knowingly excited; any *act* likewise, by which expectations are designedly raised, partakes of the nature of a direct promise, and creates a similar obligation for its due performance. He, for instance, who takes a poor child, and educates him to fill the situation of a child not poor, is bound to give him the means to fill such situation, as much as if he had directly promised to do so. And a minister of state, who by his complaisance raises in a dependant an expectation of patronage, is bound by such notice to provide for the dependant.

On this principle rests the obligation of tacit promises.

An intention may be declared either simply, or conjointly with an engagement to perform. In the former, the duty is

49 Why not in the sense of the promiser's intended acts? Give examples. 50 Why not in the sense the promisee received it?

51 What is evident concerning the rule that we have given?

51 What is said about a mere act? Give examples.

52 What are such acts called?

53 May an intention be declared in one manner only?

54 What is said of a simple declaration?



satisfied, if you were sincere at the time, though the intention be subsequently changed: in the latter, the power to change exists no longer. But, in popular understanding, most declarations of present intention amount to absolute promises. If, therefore, there is a wish of reserving a liberty to change, such declarations should be qualified by such expressions as, *at present, if I do not alter*, or the like. And, after all, a wanton change of intention, as it has excited some expectation, is always wrong.

III. In what cases promises are not binding.

1. Promises are not binding where the performance is impossible.

This excuse for non-performance is valid only, if the impossibility be unknown to the promiser when he makes the promise; otherwise, he is guilty of fraud in leading the promisee to expect what he, the promiser, knows cannot be performed; as in the case of a father, who promises a marriage gift with his daughters, when he knows that his whole property is secretly mortgaged. In such cases, as the promise cannot be performed in fact, the promiser must repair the loss done to the promisee from such non-performance. When the promiser himself occasions the impossibility, he is guilty of a direct breach of promise; as, for instance, when a soldier maims himself to get discharged.

2. Promises are not binding where the performance is unlawful.

1. Where the illegality is known.

If, for instance, a person promises to murder another, or betray his interests; as the performance would be an unlawful act, the engagement is void from its commencement, in consequence of a prior engagement not to do such act. There may be guilt in making such promises, but there can be none in breaking them. And moreover, if in the interval between the promise and its performance, any illegality presents itself, the promise ought to be broken.

54 What is said of an engagement?

55 What is said of most declarations of present intention?

56 Is it right to change our intention when once made known?

57 What is the first case in which promises are not binding?

58 What is said of this excuse? Give an example.

59 Suppose the promiser himself occasions the impossibility?

60 What is the second case in which promises are not binding?

61 Give an example of a case where the illegality is known at the time of promise, 62 What is said of such cases?



## 2. Where the illegality is not known.

If, for instance, a woman promises marriage; but, previous to the marriage, discovers that her intended husband has already a wife living, the promise becomes void: for, as it was given and received on the supposition that the performance was lawful, the legality becomes a condition of the promise, and on its failure the obligation ceases. So in the case of Herod's promise to his daughter-in-law, the promise was not unlawful, in the sense in which Herod intended it to be taken; but the illegality attending its *literal* performance discharged Herod from the obligation of such performance in consequence of a superior previous obligation.

The rule that promises are void when the performance is unlawful, extends also to imperfect obligations. (Book ii. chap. iii.) Thus, if a vote be promised to one candidate, and on the appearance of a better, it is found that the electors are bound by oath to select the most deserving, the previous obligation of the oath cancels the obligation of the promise.

The specific performance of promises is a perfect obligation; and some moralists have decided, that where a perfect and imperfect obligation clash, the imperfect must yield; whereas, in such a case, the obligation which is *prior in time* ought to prevail.

As the validity of a promise is destroyed by the unlawfulness of its *performance* and not of the *motives* which led to it; it frequently happens that the first condition of a contract is not obligatory, but the promised recompense is, if that first condition be fulfilled. Thus, the promised reward of a crime should be paid after the crime is committed; for after the mischief has been once done, it is not increased by the payment of the reward. Hence, if the motive be even criminal, the obligation is not canceled; as in the case of a person, who, having promised to marry a woman after the

63 Give an example, in which the illegality is unknown at the time of promise.

64 Why does the obligation cease in such cases?

65 What celebrated promise was of this kind, and what is said of it?

66 To what does this rule extend? Give an example.

67 What if two obligations are contradictory?

68 What follows from the second rule of canceling promises? Give an example.

69 What is the obligation of a promise that is made with a criminal motive? Give an example.

death of his wife, then sick, refused, when the wife was dead, to fulfil the engagement ;—correctly, said a moralist, to whom the case was referred ; but incorrectly, on the principles stated above. For, though the motives might be immoral which led to the promise, its performance was lawful, and therefore obligatory.

A promise cannot be deemed unlawful where it produces, when performed, no effect beyond what would have taken place had no such promise been made. Hence promises of secrecy ought not to be violated, although the public would derive advantage from the discovery. For, as the information would not have been imparted on any other condition, the public do not lose by the performance of the promise, any thing which they would have gained without it.

3. Promises are not binding when they contradict a former promise.

Because the performance would be then unlawful.

4. Promises are not binding before acceptance, i. e. before the promisee has knowledge of it.

For the obligation to perform rests on the known expectation raised. But there can be no expectations, where there is no knowledge of the promise. Nor is the performance obligatory, even if the promisee has obtained a knowledge of the promise, but through the medium of a party not empowered to communicate it: for that which constitutes the essence of a promise is here wanting, an expectation raised voluntarily.

5. Promises are not binding when they are released by the promisee.

This is evident; although it may not be evident who the promisee is. The doubt may however be solved by considering that if a promise be given to A direct, for the benefit of B, then A is the promisee; but if to A only indirectly, as a messenger to convey the promise to B, then B is the promisee.

70 What fulfilment of a promise is not unlawful, let the consequences be what they may? Mention a case.

71 What is the third case in which promises are not binding? Why?

72 What is the fourth case? Why?

73 But suppose the promisee has been informed of the promise?

74 What is the fifth case in which promises are not binding?

75 What doubt may arise here?

76 How may it be solved?

Promises to one person for the benefit of another are not released by the death of the promisee ; for his death neither makes the performance impossible, nor implies his consent to release the promiser.

6. Erroneous promises are not binding.

1. Where the error proceeds from the misrepresentation of the promisee.

For instance, a beggar solicits charity by a story of distress, and a promise of relief is given. But previous to the performance of the promise, the distress is found to be fictitious. The promise is canceled. For it was given on the supposition of the truth of the story ; but that condition failing, the promise ceases to be obligatory. In like manner, the business of an office has been represented to a person, and he makes a promise to undertake it ; but if the labor be greater than the promisee represented, the promiser is released.

2. When the promise is given on a *supposition* not absolutely expressed, but understood both by the promiser and promisee ; and that supposition turns out to be false.

For instance, if a father, hearing the news of his son's death, promises to make his nephew his heir, he is, on the news proving false, released from his promise ; because, as the nephew knew that the promise was in reality conditional though not so expressed, the expectations raised were subject to a condition which formed an essential part of the promise.

In other cases, no errors on the part of the promiser can cancel the engagement. For example, a vote is promised to one candidate ; afterwards another offers himself, whom the promiser would prefer ; but his vote must follow his promise. [Unless the last candidate is actually better. See page 78.] The error was on the part of the promiser, who must abide by his error : the promisee, who made no mistake, must not suffer by it : as the promise was given with-

77 What would be the obligation if the promisee in the first case should die ? Why ?

78 What is the sixth class of promises that are not binding ?

79 What is the first kind of erroneous promises ?

80 Why should they be canceled ? Give examples.

81 What is the second kind of erroneous promises ?

82 Why are such promises not binding ? Give examples.

83 What if the error is only on the part of the promiser ? Give examples.

out a condition, it cannot be affected by a subsequent event. Hence, if a man promises a certain fortune with his daughter, he is bound to perform the promise, even though his means be less than he thought them to be when he made the promise.

The case, however, of erroneous promises is attended with this difficulty, that if every mistake be allowed, the rule becomes too loose; but if the rule be drawn too tight, the result must be hardship and absurdity in its application.

Whether promises which are *extorted by fear* are binding, has been long held as a doubtful point. For as the obligation of all promises rests on the utility of mutual confidence, whatever tends to check that confidence is wrong; but if, on the other hand, such confidence leads to general mischief, it ought not to be insisted on; and it is in the balance of opposite good and evil that the difficulty rests. For instance, a man, threatened with death, saves his life on his promise to give the threatener at a future day a sum of money. This safety is a good consequence of the confidence which is placed by the promisee in the promiser. But the performance of promises thus extorted by fear, leads to a repetition of such acts of violence. This is a bad consequence. Between these two consequences moralists have to choose—a choice not yet decided on. [But is this not settled by rule 2, page 79?]

In other cases, where a prisoner is suffered to go at large on promise of good behavior, such a promise is binding, not, as some moralists say, because the imprisonment is just, but because the utility of confidence in such promises is the same as the utility of confidence in the promises of persons at liberty.

Promises to God are called *vows*. The obligation to keep them depends, not on the principle which regulates other promises, but on the want of reverence to the Deity, which want is indicated by their non-performance.

The Scriptures give no encouragement to make vows, much less to break them when made. The few vows we

84 What difficulty is attendant on this kind of promises?

85 What is thought of promises that are extorted by fear?

86 What is the argument for the affirmative? For the negative?

87 Apply these arguments to an example.

88 What is a plainer case in extorted promises?

89 What are vows? And why should they be kept?

90 Is there Scriptural authority for vows?

read of in the New Testament were religiously observed. Of Jephthah's vow, as commonly understood, the obligation was not binding; because, by its performance, an act previously unlawful was committed.

#### CHAP. VI.—CONTRACTS.

A contract is a mutual promise. Therefore, the law which regulates promises regulates contracts also.

Hence, as in promises the obligation is measured by the expectation raised voluntarily by the promiser; so in contracts, whatever is expected on one side, and known to be so expected on the other, is a condition essential to the contract.

The several kinds of contracts may be exhibited at one view, thus :—

Contracts of	{	Sale.	{	Inconsumable Property
		Hazard.		
	{	Loan of		
	{	Labor.		
				Money.
				Service.
				Commissions.
				Partnerships.
				Offices.

#### CHAP. VII.—CONTRACTS OF SALE.

The rule which requires to be most strictly inculcated is, that the seller is bound to disclose the faults of what he offers for sale.

To tell a direct falsehood in recommendation of our wares, is confessedly an immoral act. And from this we argue that concealing the truth, by not saying that they possess the bad qualities which they do, is likewise an immoral act. Because, as the moral qualities of actions differ only in their motives and effects; if the motives and effects be the same, the actions also are, morally speaking, the same. But as in these cases the motives are the same, viz. benefit to the seller from the higher price; and the effects the same, viz. injury to the buyer from an inferior article, or at least not.

91 What is a contract?—and by what law is it regulated?

92 What should always be considered as a condition in a bargain?

93 Name the several kinds of contracts.

94 What is an important rule of justice in contracts of sale?

95 From what do we deduce this fact? How do we prove it?



such as the representation warranted; it is manifestly as much a fraud to magnify the qualities of wares, as to conceal their defects.

The obligation is greater, and, if that is performed, the honesty greater also, to tell the truth, when the goods are such that the faults cannot be detected except by their use.

From this charge of dishonesty are to be excepted sales of goods, where the silence of the seller implies some fault in the article; as in the case of a horse sold without warranty, on which account it brought an abated price.

Connected with this principle of dishonesty is the practice of passing off bad money. For this act it has been pleaded, that, as it was received for good, it may be passed for good; a plea similar to that given by a person, who having been robbed himself, reimbursed his loss by robbing another.

When no monopoly or combination exists, the market price is always the fair price; which may, therefore, be fairly demanded. Hence, to say provisions are at an unreasonable price, is an absurdity; for if the price were unreasonable, none would give it.

If a man asks for goods more than the market price, such a demand is deemed dishonest; yet, as the goods are the man's own property, he may say he has a right to put what value he pleases on them. Still, as the very act of tendering goods for sale carries with it the implied condition of their being to be sold at the market price, and as he knows that customers enter his shop with that belief; he is bound to sell them at such a price, unless there be a specific understanding between the parties of a contrary nature; and in that case, any price may be asked without any imputation of dishonesty.

If the article sold be accidentally destroyed or injured between the sale and delivery, the loss must fall on the party

- 96 What renders the obligation more necessary?
- 97 In what cases is it not dishonest to be silent of faults?
- 98 What has been pleaded for passing counterfeit money?
- 99 Is it a good plea?
- 100 How should we determine the price of a commodity?
- 101 Why may one suppose a higher demand is not dishonest?
- 102 How can you prove that it is dishonest?
- 103 When may a person ask a higher price than customary?
- 104 After a thing is sold, on whom must fall any loss that may happen to it?

who undertook the risk of its safe custody. For instance, if, after the purchase, the seller offers to deliver it, and the safe delivery forms a part of his responsibility; on its failure, payment may be resisted or reclaimed. But if the buyer requests the seller to keep charge of the article, he takes the responsibility on his own shoulders, and cannot resist or reclaim payment, except for injury done wilfully.

But in this, as in other cases, custom determines, if not more correctly, at least more effectually, than casuists can. Not that custom of itself possesses any authority to decide between right and wrong; but only that the contracting parties are presumed to have in view all the tacit conditions of similar contracts. Hence, frequently, by custom alone can it be decided, at what moment the risk of the buyer ends, and that of the seller commences.

#### CHAP. VIII.—CONTRACTS OF HAZARD.

By contracts of hazards are meant Gaming and Insurances.

Some say that one side in this kind of contracts ought not to have any advantage over the other; but this is scarcely possible. For that perfect equality of skill and judgment, which this rule requires, is seldom, if ever, to be met with. Nor is it requisite, if practicable. For one party may, if he pleases, give the *whole* stake, and of course a *part* of it; or, in other words, he may assent to the natural inequality of the parties, and allow to his opponent an advantage in the chance of winning the whole.

The proper restriction is, that neither side have an advantage unknown to the other. For though the event be still uncertain, such advantage has its value; and so much of the stake as that value amounts to, is taken from the other party without his knowledge or consent. If, for instance, in a game of whist, one party has greater skill; the other knows that such a superiority is possible, and takes his measures

105 Give an example for each side ?

106 How are such cases generally determined ? Why ?

107 What are contracts of hazard ?

108 What has been thought of this kind of contracts ?

109 Can that well happen ? Why ?

110 Is it actually necessary, if it could happen ? Why ?

111 What is a proper restriction ? Why ?

accordingly. But if the superiority be not in skill, but in acts unknown to, and not even suspected by, the other, such as looking into his opponent's hand, or making concerted signals with his partner, the advantage is an act of dishonesty, and the contract to pay the loss is void. And so in other cases where chance enters, all advantage obtained, except from sources which one party previous to the contract knew or suspected that the other might possess, vitiates the contract. Hence, in the case of insurances, where the underwriter enters on the risk, dependent solely on the representations of the insured, if such representations be designedly incorrect, the policy becomes void; because the insured has not, in fact, completed his part of the contract, which is to tell the whole truth.

#### CHAP. IX.—CONTRACTS OF LOANS OF PROPERTY INCONSUMABLE.

When the article lent is to be itself restored, as a book or horse, the loan is of property inconsumable; in contradistinction to consumable property, when not the thing itself, but its value is to be returned, as money, or articles in their nature perishable.

If the article which is lent be damaged, the loss of the damage will fall on the lender, provided such damage occur by using the article in the proper manner, for such purposes as the article was lent for; because the lender contemplated the possibility of such damage previous to lending. But if the damage accrue by the negligence of the borrower in the use of the article lent, or in its misapplication to other and new purposes, the borrower must sustain the loss; for here the lender neither knew nor suspected such misapplication of the loan.

In the case of an estate or house lent on lease for a term of years, the increase or diminution of its value may be such as to make the rent a positive gain or loss either to the land-

112 Give an example of honest and dishonest advantage.

113 Does this principle hold in all contracts of hazard?

114 How will it apply to insurances?

115 What is inconsumable property?

116 On whom must the damage of such property fall?

117 In what cases will the borrower be accountable for it?

118 What case may be stated, in which the value may be eventually increased or diminished?

lord or to the tenant. To ascertain to whom the advantage or disadvantage belongs, we must inquire if the alteration was expected by the parties. For if so, the hirer must take the consequences of benefit or loss; if not, the owner. For instance, as the uncertainty of produce in successive seasons is expected by both parties, the hirer both receives the benefit of a good, and suffers the loss of a bad season. But if the loss be occasioned by an event, which the parties could neither foresee nor avert, as any convulsion of nature, or the irruption of an enemy, the loss shall fall on the owner; who, in like manner, is to receive the *benefit* that might arise from similar unexpected changes. This determination rests on the reason that events foreseen form a part of the contract; but that with respect to events not foreseen, the contract is as if none had been made.

#### CHAP. X.—CONTRACTS OF MONEY-LENDING.

The loan of money, like that of other property convertible into money, may be paid for.

The objection to usury or interest, (for they formerly meant the same,) once prohibited by law in Christendom, arose from the Mosaic enactment; “Thou shalt not lend on usury to thy brother. To a stranger thou mayest lend.” Deut. xxiii. 19, 20. But this prohibition is now supposed to be a part of the polity intended peculiarly for that nation, which was calculated to preserve in the same family its share of the property originally distributed to each tribe; and it is therefore ranked in the same class with the law which required a man to marry his brother’s widow if left childless, and with another law which enacted that in the year of jubilee, alienated estates should revert to the original proprietor.

This interpretation is confirmed by the distinction made between the brother and a stranger; a distinction which God would hardly have made, had he intended the law to be of universal application.

The Roman law once allowed twelve per cent. as the rate of interest, but Justinian afterwards reduced it to four. In

- 119 What is the rule of justice in such cases? Give an example.
- 120 Why do we arrive at this determination?
- 121 What is thought of the law of Moses that prohibits interest?
- 122 How is this interpretation confirmed?
- 123 What have been the rates per cent.?



the reign of Elizabeth, the first act which tolerated usury restrained the rate to ten per cent., which, in the time of James I., was reduced to eight; then, by Charles II. to six, and by Anne to five, on pain of forfeiture of treble the amount. [In the United States the rate is generally six per cent., though in some states it is seven.]

The policy of these regulations is to give the borrowers the power to obtain aid at a moderate rate, and to guard them against the extortions of avaricious money-lenders.

Compound interest, though sometimes forbidden by law, is not contrary to natural equity; for if interest has been any time due, it is actually a sum lent.

Whoever borrows money is bound to repay it; and in order to effect such repayment, he is also bound to make every sacrifice of a pecuniary kind, by turning into money all available assets, lessening his family expenses, and employing all the lawful means he can devise, the moment he perceives no reasonable prospect of satisfying his creditor without such sacrifice. Nor has the debtor the right to delay the repayment; for by such delay the creditor depends on the uncertain contingency of the debtor's life; a condition which neither party anticipated originally in the contract for the loan.

The law which authorizes the imprisonment of an insolvent debtor has been represented as a gratuitous cruelty, which benefits neither the creditor nor community. If the incarceration of the debtor were merely to satisfy the creditor's feelings of revenge, the motive and the act would be equally unjustifiable. But if it be viewed as a public punishment, its justice will be apparent. The frauds relating to insolvency are as necessary to be punished as frauds of other kinds. Nor is the obstinacy of debtors who will not pay their debts when they can, less deserving of punishment. The only question is, whether the power of imprisonment should rest with the exasperated creditor. Now the

124 What is the intention in making these rules?

125 Is compound interest lawful?

126 To what management is a borrower bound?

127 Has he the right of procrastination in payment? Why?

128 What has been thought of imprisoning debtors?

129 When is it wrong? When is it just? Why?

130 Why should the power of punishment be in the hands of the creditor?



frauds are so various and versatile, that discretionary power alone can reach them ; nor will such power be effectually exercised, unless intrusted to the creditor alone.

But as imprisonment is a punishment, and as punishment presupposes crime, the imprisonment for insolvency, when such insolvency is the result of acts over which the debtor had not any or only a small control, is a manifest wrong ; and for a creditor, provoked by such loss, to relieve his own pain by inflicting a greater on the creditor, is inhuman.

Any alteration of the law, which should distinguish between fraudulent or non-fraudulent acts of insolvency, would be an improvement ; but a total repeal of the law would be a greater hardship to the needy than even its present rigor. For as the power to coerce is a kind of security to the creditor, the loss of that, as in the case of a repeal, must be supplied by some other security, which the needy, though honest, would be unable to give, and therefore would be deprived of the aid of the loan. Now as persons without capital must buy on credit before they can sell ; in the absence of loans, both he who has and he who wants the funds for trading would be unemployed. Hence, a greater evil would accrue from the sufferings of the ninety-nine wanting a loan, than from those of the remaining hundredth, who, after having obtained a loan, becomes insolvent, and is then left to the vengeance of an exasperated creditor.

#### CHAP. XI.—CONTRACTS OF LABOR—SERVICE.

In this country, service of citizens is voluntary and by contract. But as the contract involves many particulars as to work, food, treatment, and indulgences, as well as pecuniary recompense ; only a few leading points are noticed in the contract, and the rest are left to the known *custom* in such cases.

A servant is not bound to obey the unlawful commands of

- 131 When should this act of punishment be resorted to ?
- 132 What may be said of the law on this subject ?
- 133 What would be the effect of repealing the law, and why ?
- 134 What would be the general effect ?
- 135 Does the contract for services embrace all the particulars of the bargain ? Why ?
- 136 How are the omitted points determined ?
- 137 What is a servant not bound to obey ?

his master ; for the obligation depends on his promise ; but that does not extend to unlawful acts. Chap. v. § 3.

Hence, the master's authority is no justification of a servant in doing wrong ; for the servant's own promise, on which that authority is founded, would be none.

Clerks and apprentices ought to be employed only in the business which they were to learn. For, their hire is instruction ; and to deprive them of the opportunities of that, for the purposes of their employer, is to rob them of their wages.

The master is responsible for acts done by his servant in the ordinary course of employment ; for they are done under a general authority equivalent to a specific command. Thus a banker is responsible for money paid to his clerk, but not if paid to his footman ; because it is not the business of the latter to receive money for his master. So if a servant be sent by his master to a shop to buy goods on credit, whatever goods he may afterwards obtain for himself, so long as he is in the same service, the master is answerable for ; because the seller cannot tell whether the goods are, or are not, required for the master.

In other cases, the law, rather than moral justice, ordains that the master be responsible for the acts of his servant, even when the servant is a free agent ; as, for instance, when an innkeeper's servant robs a guest, or a farrier's man lames a horse, or a coachman injures a passenger or passer-by ; the innkeeper, farrier, and coachman's master are respectively liable.

Connected with the contract for service, is the duty of giving a character to a servant ; in the performance of which, most persons through mistaken views of kindness do in truth act wrong. A character, if not true to the letter, is a fraud on the party who accepts it ; and the act is the more ungenerous as the person who is deceived by it is a stranger. But to misrepresent secretly a person's character to others,

138 If a servant does wrong for his master, is he justified by being commanded ? Why ?

139 How are clerks and apprentices to be employed ? Why ?

140 When is the master responsible for his servant's acts ? Why ?

141 Give a few examples, with their reasons.

142 To what extent does the law enact on such subjects ?

143 What is our duty in the matter of giving characters ?

144 How is considered the act of injuring a servant's character ?

with the view of retaining for one's own use the services of such employee, is cruel, immoral, and cowardly; cruel, because the injury is done without the power of remedy; immoral, because it destroys the motives to good conduct; and cowardly, because a similar act in the case of equals, would by the law of honor expose the party offending to the loss of character or life.

A master of a family is bound not to permit among his domestics any vices which he might restrain. This arises from our duty at all times to prevent misery, of which vice is the inevitable forerunner. This care of his household on the part of Abraham met with the approbation of God;\* and indeed no authority is so well adapted for this purpose, because none operates on the subjects of it with an influence so direct.

The language of the Christian Scriptures, touching the relative duties of masters and servants, breathes a spirit of liberality which has always been but little known in ages when servitude was slavery; and which must have resulted from the habit of viewing both parties in a common relation to their Creator, and a common interest in a future state. "Servants, be obedient to your masters, as unto Christ; not with eye-service, as men-pleasers, but doing the will of God from the heart; with good-will doing service as to the Lord, and not to men, knowing that whatsoever good thing any man doeth, the same shall he receive of the Lord, whether he be bond or free. And, ye masters, do the same thing unto them, forbearing threatening: knowing that your Master also is in heaven; neither is there respect of persons with him."† Nor is the *policy* of this view less than its *liberality*; for by teaching servants to consider God as their present task-master and future rewarder, a steady and cordial obedience is produced, in place of that constrained service which cannot be trusted out of sight, and is therefore well called eye-service; while the exhortation to masters to consider themselves accountable, is equally seasonable.

145 To what is the master morally bound? Why is it thought so?

146 What else confirms this opinion?

147 What are the scriptural directions to servants?

148 What directions to masters?

149 What may be thought of these directions? Why?

\* Gen. xviii. 9.

† Eph. vi. 5—9.

## CHAP. XII.—CONTRACTS OF LABOR,—COMMISSIONS.

He who undertakes another's business engages tacitly to employ on it the same care as if it were his own; but he promises no more than this. If he has done so much, he has discharged his duty, even though it should afterwards appear that greater exertion would have benefited his employer more.

The chief difficulty of an agent is to decide whether he may or may not depart from his instructions, when the object of the commission presents to his mind a view different to that which he knew his employer had, when he, the agent, was charged to execute such commission. The latitude allowed must vary according to circumstances. For instance, an attorney, sent to complete the purchase of an estate at a certain price, finding the title defective, refuses to pay the money; and properly so. On the other hand, an officer is ordered to perform a particular duty, which he is satisfied his commander would not have ordered, had he known the real state of affairs: yet he is bound to follow implicitly his instructions.

What is trusted to an agent may be lost or damaged by *accident* when in his possession. If he receives no pay, he is not answerable for the loss: for he gives his labor for nothing, and cannot be expected to give security for nothing also. But if he receives any pay, the decision respecting his responsibility will rest on the apprehension of the parties respecting the terms of the engagement; and this again is regulated by custom. For instance, whether a carrier be or be not liable for the loss of goods intrusted to him, when the loss is not imputed to any fault or neglect of his, is a question of custom alone. But if the carrier stipulates that he will not be accountable for goods of a certain description, he engages, in fact, to be accountable for all others of any other description; because the limitation of one part is the

150 What does an agent promise in his contract?

151 What may limit his exertions?

152 What is the chief difficulty experienced by an agent?

153 In such cases, is the judgment of the agent always trusted to?

154 Give examples of both cases.

155 How is an agent without pay to be affected by accidental injuries to his charge?

156 How is he to be affected if he is paid for his agency? Give some examples.

non-limitation of others. On the other hand, any caution taken by the owner to guard against risk exonerates the carrier, by showing that the sender was aware of the risk, and that he took it on himself.

Universally, unless a *promise*, either express or tacit, be proved against the agent, the loss must fall on the owner.

The agent may accidentally suffer in person or purse by the business he undertakes ; still he can claim no compensation for such loss. For if the danger was not foreseen, neither the agent nor his employer thought of such compensation, and consequently none is due. If it was foreseen, the business was undertaken with the knowledge of the risk, the remuneration was of course regulated with reference to such risk, and a part of the remuneration is in fact a compensation for the loss incurred. Of course, the loser can require nothing extra.

#### CHAP. XIII.—CONTRACTS OF LABOR,—PARTNERSHIP.

On the subject of partnership, the only point of doubt is the division of profits, where one party contributes money, and the other labor.

Rule. From the value of the partnership-stock deduct the sum advanced ; and the remainder is the profit. Divide that between the two partners, in proportion of the interest of the money to the wages of the labor ; allowing such interest as money might fetch on the same security, and such wages as would be given for the same labor. But if there be no profit, then the moneyed partner loses his interest, and the working one his labor. If the original stock be diminished, the working partner loses only his labor, whereas the moneyed partner loses his capital and interest ; but for this disadvantage, must be set off the chance of greater profit arising from the rate of interest in his favor.

It is true, the proportion, in which the profits are to be divided, is generally expressed in the contract itself. But the agreements, to be equitable in such cases, must pursue the principle here laid down.

All the partners are bound by the act of one ; for that one is supposed to be the agent of the others.

157 What effect has a caution from the owner ?

158 What is the general rule in agencies ?

159 What claims has an agent for personal injury ? Why ?

160 What is the moral rule for partnership ?



## CHAP. XIV.—CONTRACTS OF LABOR,—OFFICES.

In many offices, such as professorships, principals of schools, and managers of corporate bodies, there is a two-fold contract; one has regard to the origin of the office, the other to the electors to it.

With regard to the origin, the officer is bound to do all that is appointed by the charter, deed of gift, or will of the founder. The contract with the electors, is to do all that has been *customarily* done by the person in office; for such is the known expectation of the electors, and the officer elected must satisfy them, or previous to election, stipulate for their non-performance.

The electors can excuse the officer from the performance of these customary duties only: for as their power cannot annul the positive injunctions of the original deed, so neither can they stipulate with the candidate for the non-performance of those duties which such positive injunctions imply.

It is difficult and yet important, to know what offices may be performed by deputy. But the cases need only be stated where a deputy is not allowable.

An office may not be discharged by deputy,

1. Where a particular confidence is placed in the judgment and conduct of the individual; as a judge, commander-in-chief, or a guardian of property or persons.

2. Where the custom hinders; as in the case of tutors.

3. Where the deputy cannot legally perform all the acts of the principal; as for instance where he lacks the legal authority.

4. Where general mischief would result to the service from such substitution of the deputy for his principal; as for example, the discouragement of military merit if superior officers in the army might employ substitutes.

161 What kind of contract is made in the case of some offices?

162 To what is the officer bound by the origin of the office?

163 To what is he bound by contract with the electors? Why?

164 How far can he be excused by the electors? Why?

165 What difficult and important question arises here?

166 What is the first case in which an office cannot be discharged by deputy?

167 Give the second, and an example.

168 State the third, with its example.

169 The fourth, and an example.

## CHAP. XV.—LIES.

A lie is a breach of promise; for he who speaks seriously to another, tacitly promises to speak the truth; because he knows the truth is expected.

Or, the obligation to veracity may rest on the ill consequences resulting from a breach of it. The ill consists in some specific injury to an individual, or the general injury to society, by the destruction of mutual confidence. Hence, a lie may in its tendency be mischievous, and therefore criminal, though harmless in its individual application.

All falsehoods are not criminal.

1. Where no one is deceived; as in parables, fables, tales, &c. where the speaker means to divert merely; or in servants denying their master; or an advocate asserting the justice of his client's cause; because in these and similar cases no confidence is destroyed, for none was reposed; no promise violated, for none was given to speak the truth.

[Concerning the practice of requiring servants to "deny" their masters, Mr. Dymond says, "This childish and senseless custom has had many apologists, I suppose because many perceive that it is wrong. It is not always true that such a servant does not in strictness *lie*: for, how well soever the folly may be understood by the gay world, some who knock at their doors have no other idea than that they may depend upon the servant's word. Of this the servant is sometimes conscious, and to these persons, therefore, he who denies his master, lies. An uninitiated servant suffers a shock to his moral principles when he is first required to tell these falsehoods. It diminishes his previous abhorrence of lying, and otherwise deteriorates his moral character. Even if no such ill consequences resulted from this foolish custom, there is this objection to it, which is short, but sufficient,—*nothing* can be said in its defence."]

2. Where the person to whom you speak has no right to know the truth, or more properly, when little or no incon-

170 What is a lie? Why? What follows from this?

171 For what other reason are we bound to speak the truth?

172 What is the ill effect of lying?

173 Are all falsehoods criminal?

174 What is the first class that are not? Why?

175 What does Mr. Dymond say of the practice of denying masters?

176 What is the second class that are not lies? Give examples.

venience can arise from the want of confidence ; as, to tell a falsehood to a madman for his own advantage ; to a robber to conceal your property ; to an assassin to defeat or divert him from his purpose. For, here the inconvenience is only to individuals, which is balanced by the advantage gained by individuals also ; nor can any consequences generally hurtful be drawn from such insulated falsehoods.

Hence, it is allowable to deceive an enemy by false colors, false intelligence, and other deceptions, in time of war but not during a *truce* ; for in the latter period, confidence is, in the former is not, placed in the acts of either party. Hence, too, the immorality of falsehood in hoisting feigned signals of surrender or distress ; for, on the faith of such signals, one opponent lays down the character of a foe for that of a friend, and supposes that the other has done so likewise. Here then is a deception during a period of apparent truce, and consequently it is wrong ; because the general consequences of such conduct would be to disbelieve such signals, and to increase the sum of the misery of towns besieged, or of ships in distress.

On this article Dr. Dewar remarks,

[“A rule thus founded on the principle of expediency, allows, or rather authorizes us, to utter falsehoods as often as we can induce ourselves to believe that little inconvenience will result from the want of confidence. Can we conceive any maxim more anti-scriptural, or more immoral in its tendency ? It is substituting as the rule of moral conduct, in room of the will of God, our own limited and partial views of the consequences of actions.” And Mr. Dymond says, “Such a doctrine would be equivalent to saying that we are at liberty to disobey the Divine laws when we think fit. And if I may tell a falsehood to a robber in order to save my property, I may commit parricide for the same purpose ; for lying and parricide are placed together and jointly condemned in the revelation from God.”—1 Tim. i. 9, 10.]

177 Why does Dr. Paley think that they are not criminal ?

178 What is allowed by the laws of war ? What is not ?

179 What is said of feigned signals of distress or surrender ?

180 What does Dr. Dewar say that this principle of expediency will lead to ?

181 What else does he remark of it ?

182 What does Mr. Dymond say of it ?

Some lies, harmless in their motive, may become mischievous in their effects, and consequently are to be avoided, as morally wrong; such, for instance, are the falsehoods told by those persons who give exaggerated accounts of acts performed by themselves or others. Such falsehoods, if inoffensive in other points, are wrong, because they tend to produce in the speaker the habit of lying. Disregard to truth, shown by a person in matters of no importance, tends to destroy confidence in his veracity where his narrations are connected with the promotion of his own interests, or the depreciation of others. Now, since much of the pleasure, and all the benefit of conversation, depends on the existence of such confidence, the want of it will only serve to perplex the hearer, who is uncertain to what extent he ought or ought not to believe.

Pious frauds, as they are improperly called, such as the forgery of new, and the interpolation or castration of old books, counterfeit miracles, and pretended inspirations, even if they should be done with a good design, are both foolish and immoral; immoral, because they tend to destroy confidence in documents really genuine; and foolish, because they miss the very object aimed at. Christianity has suffered more injury from this than from all other causes put together.

As there may be falsehoods which are not lies, so there may be lies without the appearance of direct falsehood. Of this kind are prevarications, which are falsehoods in reality, though not in appearance, on account of being disguised under the ambiguity of language. But it is the wilful deceit that makes the lie; and the deceit is wilful when the words are not true in the sense in which the hearer does and must take them, according to the custom of the language.

A man may also *act* a lie, as by pointing to a wrong direction, when asked the road; or where a tradesman shuts up his windows to induce his creditors to believe that he is

183 What is said of exaggeration? Why is it wrong?

184 What is said of disregard to truth in small matters?

185 What effect has it upon the hearer?

186 What is the character of pious frauds?

187 Why are they immoral? Why are they foolish?

188 Can there be a lie without a direct falsehood?

189 What makes the lie? And when is the deceit wilful?

190 What must the words of truth be according to?

191 How may a man *act* a lie? Why?

abroad ; for to all moral purposes, speech and action are the same, the former being only a mode of the latter.

There are also lies of *omission*. For instance, if an historian of the reign of Charles I. wilfully suppresses evidence of that prince's despotic measures, he may be said to lie by omission ; for, by the very title of his book, he tacitly promises to tell all the truth he knows of the events of that period.

## CHAP. XVI.—OATHS.

i. Forms of oaths. ii. Signification. iii. Lawfulness. iv. Obligation. v. What oaths do not bind. vi. How oaths are to be interpreted.

1. The forms of oaths, like other religious ceremonies, have in all ages varied, consisting generally of certain words accompanied with a bodily action.\*

Amongst the Jews, the juror held up his right hand towards heaven. Hence, we find in the 144th Psalm, " Whose right hand is a right hand of falsehood." The same form is retained in Scotland still. An oath of fidelity was taken amongst the Jews by the servant putting his hand under the thigh of his lord, as Eliezer did to Abraham, Gen. xxiv. 2 ; whence, probably, is derived the form of doing homage, by putting the hands between the knees and within the hands of the liege ; as is done in some places.

Amongst the Greeks and Romans, in private contracts, the parties took hold of each other's hand, whilst they swore to the performance ; or they touched the altar of the god by whose divinity they swore. But on more solemn occasions, they slew a victim ; and as the beast was struck

192 What is the last-mentioned class of lies ? Give an example.

193 What is the general form of oaths ?

194 What was the form among the Jews ?

195 Is this practice continued among other nations ?

196 What was the form among the Greeks and Romans ?

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\* It is commonly thought that oaths are denominated *corporal* oaths from the bodily action which accompanies them, of laying the right hand on a book containing the four Gospels. This opinion, however, appears to be a mistake ; for the term is borrowed from the ancient usage of touching, on these occasions, the *corporale*, or cloth which covered the consecrated elements.



down with certain ceremonies, the parties were said, as in English, "to strike a bargain."\*

The forms of oaths differ in Christian countries; but in none do they convey either the meaning or sanctity of an oath worse than in this country and in England. Here the juror, after repeating the promise or affirmation which the oath is intended to strengthen, adds, "So help me God." The force of this formula rests in the particle *so*; that is, on condition of my speaking the truth, or performing the promise, may God help me; otherwise, not. The juror, while he hears or repeats the words of the oath, holds his right hand on a Bible, or other book containing the four Gospels, and, at the conclusion of the oath, kisses the book: but this act seems to be done rather out of reverence to the book, than as forming a part of the oath.

But it is not so much the form of the oath, as the levity with which it is administered, that has produced a general disregard to the sanctity of the obligation; to say nothing of the multiplicity of frivolous oaths, especially those connected with the revenue. A pound of tea, for instance, cannot travel from the ship to the consumer without costing half a dozen oaths; and the highest and lowest functionaries in the state are equally sworn into office. If some security beyond a man's word be required, let the law annex, if it will, to direct falsehoods and indirect prevarications, penalties proportioned to their mischiefs; but let it spare the solemnity of an oath.

II. Whatever may be the form of an oath, its signification is the same. God is called to witness, or to notice, what we swear; and it is "invoking his vengeance or renouncing his favor, if what we say be false, or what we promise be not performed."

III. Quakers, Moravians, and many others refuse to swear at all, in obedience to Christ's prohibition, "Swear not at all." Matt. v. 34.

197 What is said of the forms in this country?

198 On what word rests the strength of the oath?

199 What besides the form of the oath has occasioned a disregard of it?

200 How might the evil be remedied?

201 What is the signification of an oath?

202 Why do many refuse to swear?

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\* In Greek, *τέμνειν ὄρκον*: in Latin, "*ferire pactum*."

But this prohibition, it would seem, was not meant by Christ to extend to judicial oaths.

For, the whole passage runs thus. "Ye have heard that it hath been said by them of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths. But I say unto you, swear not at all; neither by heaven, for it is God's throne, nor by the earth, for it is his footstool; neither by Jerusalem, for it is the city of the Great King. Neither shalt thou swear by thy head, because thou canst not make one hair white or black. But let your communication be yea, yea; nay, nay: for whatsoever is more than these cometh of evil."

And, 1. It does not appear that the Jews, in *judicial oaths*, ever swore "by heaven," "the earth," "Jerusalem," or "their heads;" and, consequently, it is probable that judicial oaths were not alluded to here. 2. The prohibition expressed by "not at all" is to be understood as in conjunction with, not separated from, the succeeding words, "heaven," "earth," "Jerusalem," and "head:" that is; Do not swear, says Christ, by any of these forms, for *all* are equally reprehensible. He seems to suppose that some made a distinction between swearing by the name of God, which is an oath forbidden in the Decalogue, and swearing by other oaths not forbidden there. In opposition to which, he tells them, that because all those things bear the same relation to God that his name does, to swear by any of them was in effect and substance to swear by *him*. For which reason he says, "Swear *not at all*," that is, neither directly by God, nor indirectly by any thing related to him.

3. Our Saviour himself did not make any objection to a judicial oath, when adjured by the living God to say whether he was the Christ or not. And St. Paul also calls on God to witness to the truth of his assertions, and thus in reality takes an oath: and lastly the author of the epistle to the Hebrews, vi. 16, speaks of the custom of swearing judicially, without any mark of disapprobation.

203 Does Dr. Paley think that Christ's prohibition extended to judicial oaths?

204 What is his first reason? The second?

205 What does he think occasioned this prohibition?

206 What is the third reason?

The prohibition, then, was meant to apply not to judicial oaths, but to the practice of vain, wanton, and unauthorized swearing in common discourse.

[To this Mr. Dymond replies, "From an investigation of the passage, it appears manifest that all swearing upon all occasions is prohibited. Yet the ordinary opinion, or rather perhaps the ordinary defence is, that the passage has no reference to judicial oaths.—Dr. Paley explains "our Saviour's words to relate, not to judicial oaths, but to the practice of vain, wanton, and unauthorized swearing in common discourse." To this there is one conclusive answer. Our Saviour distinctly and specifically mentions, as the subject of his instructions, *solemn oaths*; the whole prohibition *sets out* with a reference, not to conversational language but to solemn declarations on solemn occasions. Oaths "to the Lord," are placed at the head of the passage; and it is too manifest to be insisted upon, that solemn declarations, and not every-day talk, were the subject of the prohibition.

"It hath been said of old time, Thou shalt *not forswear* thyself." Why refer to what was said of old time? For this reason assuredly; to point out that the present requisitions were *different* from the former; that what was prohibited now was *different* from what was prohibited before. And what was prohibited before? Swearing *falsely*,—swearing and *not performing*. What then could be prohibited now? Swearing *truly*,—even, *swearing and performing*: that is, swearing at all; for it is manifest that if truth may not be attested by an oath, no oath may be taken. In acknowledging that this *prefatory reference to the former law* is, in my view, absolutely conclusive of our Christian duty, I would remark, as an extraordinary circumstance, that Dr. Paley, in citing the passage, omits this introduction and takes no notice of it in his argument.

"Dr. Paley says that the high-priest examined our Saviour upon oath, 'by the living God,' which oath he took. But what imaginable reason could there be for examining

207 What is his concluding remark on this subject?

208 How does Mr. Dymond reply to this remark?

209 What does he say is manifest by the subject of the prohibition?

210 What inference does he draw from the commencement of the passage?

211 What is his reply to Dr. Paley's opinion of our Saviour's examination upon oath?

him upon oath? Who ever heard of calling upon a prisoner to *swear* that he was guilty? Nothing was wanted but a simple declaration that he was the Son of God. With this view the proceeding was extremely natural. Finding that to the less urgent solicitation he made no reply, the high-priest proceeded to the more urgent. Schleusner expressly remarks upon the passage, that the words 'I adjure,' do not here mean 'I make to swear, or put upon oath,' but 'I solemnly and in the name of God exhort and enjoin.' This is evidently the natural and the only natural meaning; just as it was the natural meaning when the evil spirit said, 'I adjure thee by the living God that thou torment me not.' The evil spirit surely did not administer an oath.

"Paul says, 'God is my witness that without ceasing I make mention of you always in my prayers.'\* That the Almighty was witness to the subject of his prayers is most true; but to state this truth is not to swear. Neither this language nor that which is indicated below contains the characteristics of an oath, according to Paley's definition, i. e. an 'invocation of God's vengeance.' Similar language, but in a more emphatic form, is employed in writing to the Corinthian converts. It appears from 2 Cor. ii., that Paul had resolved not again to go to Corinth in heaviness, lest he should make them sorry. And to assure them *why* he had made this resolution, he says, 'I call God for a record upon my soul that *to spare you* I came not as yet unto Corinth.†' The expression appears to me to be only an emphatical mode of saying, God is witness; or, as the expression is sometimes employed in the present day, God knows that such was my endeavor or desire.

"The next and last argument is founded upon silence. Will it then be contended that whatever an apostle mentions without reprobating he approves? The same apostle speaks just in the same manner of the pagan games; of running a race for prizes, and of 'striving for the mastery.' Yet who

212 With what other text does he compare it?

213 What does he say concerning the supposed oaths taken by Paul?

214 What does he say concerning 2 Cor. i. 23?

215 What are his remarks concerning Heb. vi. 16?

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\* Rom. i. 9 See also 1 Thess. ii. 5, and Gal. i. 20. † 2 Cor. i. 23.



would admit the argument that *because* Paul did not then censure the games, he thought them right? The existing customs both of swearing and of the games are adduced merely by way of *illustration* of the writer's subject."']

iv. Oaths are nugatory, unless we believe that God will punish false swearing more severely than he will a common falsehood. And that he will do so, is probable, from considering that,

1. Perjury is a more deliberate sin. The juror confesses to his belief in God and in the sanctions of religion; and therefore his perjury implies his contempt of God's knowledge, power, and justice. But with a common falsehood, is connected neither the belief of God's existence, nor contempt of his power. Hence its less culpability.

2. Perjury violates a greater confidence. Men must trust one another; and the highest security for veracity is an oath. Now, as the security of reputation, property, and even of life itself, is connected with dependence on oaths, the consequence of continued perjuries would be the loss or destruction of the greatest interests on this side of the grave. A simple lie cannot do the same injury, because the same credit is not given to it. But it may be well to state that the affirmation of one who is unwilling to swear, is held equal to the oath of another person; and in that case a lie partakes of the nature and guilt of perjury.

v. Promissory oaths are not binding, when the promise itself without the oath would not be binding.

vi. As oaths are intended for the security of the imposer, they must be interpreted and performed in the sense which the imposer intended; for, otherwise, they would be no security to him. Hence the meaning and reason of the rule, "jurare in animum imponentis."

216 When are oaths nugatory?

217 What may be said of the sin of perjury?

218 Is this the case with a common falsehood?

219 What degree of confidence does perjury violate?

220 What may be the consequence of perjury? Why?

221 Has a lie the same effect?

222 When does a simple declaration become equal to an oath?

223 When are promissory oaths not binding?

224 What must be the interpretation of an oath?



## CHAP. XVII.—OATHS IN EVIDENCE.

The witness swears “to speak the truth, the whole truth, and nothing but the truth.”

To conceal designedly a part of the truth which relates to the matter in question, is as much a violation of the oath, as to testify to a positive falsehood. For as there are two kinds of oaths relating to evidence, by one of which\* the witness is required to answer truly to all questions asked; and by the other† “to tell the whole truth;” it is evident that in the latter case, where there is no restraining to the question that shall be asked, the law intended the witness to tell the whole truth, even though he is not questioned to the extent of his knowledge. So that it is no excuse for not giving the court full information, to say, “Because it was never asked me.”

The only exception to this rule is, when the witness, by such full disclosure, would criminate himself; for, as the law compels no man to be his own accuser, the oath is imposed with this tacit reservation. But such reservation extends only to cases where the law of the land permits such concealment of the truth. Hence, a delicacy with reference to the subject matter, or tenderness towards the person accused, are no pleas for concealment; for justice would thus be made to depend on the personal feelings of witnesses, rather than on the administration of the laws.

A full disclosure is also required from a person admitted to give evidence against his accomplices; because his immunity from punishment depends on the tacit engagement to tell the whole truth.

If answers be required to questions, respecting which the witness has doubts, as likely to affect himself or others, he ought to refer his doubts to the court. And as it is the bu-

225 What does a witness swear that he will do ?

226 What effect has this upon designed concealment ? Why ?

227 What is the only exception to this rule ?

228 Why is that an exception ?

229 To what cases does this exception extend ?

230 What in particular will it not excuse ? Why ?

231 What is its bearing in the case of evidence against accomplices ?

232 What if a witness thinks a question irrelevant ?

233 Why is the answer of the court any authority ?

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\* Called technically *voir dire*.

† Used in examinations in *chief*.

siness of that to declare what the mind of the law is, its answer will be of sufficient authority to release the witness; but only in cases where he believes that such release is not at variance with the intention of the person imposing the oath.

#### CHAP. XVIII.—WILLS.

The question is, Are wills a natural or adventitious right? or, in other words, Is the right to devise property founded on the law of nature, or on the law of the land?

As a man's labor is his own property, so is the produce of his labor; such as the utensils which he manufactures, the tent or hut that he builds, and the flocks or herds that he rears. And, as he may give such property away when alive, he may leave them at his death to whom he pleases; because there is nothing to limit the continuance of the right, or to restrain the alienation of it.

But property in land stands upon a different foundation. For the right to a spot of ground arises, in a state of nature, from the right to apply a part of what is common to all, to an individual's own wants and use; and as the wants and use cease at death, so does the right cease also. Consequently in such state, the family of the first occupier have, in the right of possession, a preference not by inheritance; but by becoming the first occupiers after him, and by succeeding to the same want and use.

Again, as natural rights cannot, like rights created by law, expire at the end of a certain number of years; if the testator had a natural right to dispose of landed property for one moment after his death, he might direct the disposition of it for ever; which would be absurd.

The right, then, to will landed property is adventitious, or founded on the law of the land. And this inference is confirmed by the fact, that in most countries the power to make wills has been given only by the laws of the state; as by the laws of Solon at Athens, and at Rome by the twelve

234 Is it so in all cases?

235 What is the question relative to wills?

236 What kind of property may a man leave to whom he pleases?

237 Does all property stand upon the same footing by the law of nature? Why is this the case?

238 What absurdity would follow from the natural right of willing landed property?

239 On what then is that right founded? How is that proved?

tables. And even in England, the prohibition against the divisal of land existed from the Conquest till near the close of the reign of Henry VIII., when the privilege was restored by law.

No doubt, many beneficial purposes are attained by extending the owner's power over his property beyond his life and beyond his natural right. It invites to industry, it encourages marriage, and it secures the dutifulness and dependency of children.

As wills are the creatures of the law, so they have no power except from the law. Hence, if the will be *informal*, it is the same as if it had never been made. By an *informal* will, I mean a will that lacks some formality that is required by the law, though no doubt is entertained of its meaning and authenticity.

For instance, if a man devise his freehold estate to his sister's son, and if the will be not attested by witnesses, and the law requires that attestation; then the heir-at-law is legally authorized to seize the estate, although aware of the testator's intention to cut him off; and the sister's son is morally bound to give up the estate, as soon as he finds this flaw in the will. For the intention of the testator can signify nothing unless he have a *right* to govern the descent of his estate. Now, as the right to convey is clogged with certain conditions, it is evident that if such conditions be not fulfilled, the right is virtually given up; and the heir-at-law is placed only in the situation, where he would be if there had no will been made. For, the intended will is so much waste paper, from the defect of right in the person who made it. And as the retention of the estate by the sister's son would be contrary to law if the flaw were known to the legal heir, so it is against morality not to give it up, although the flaw be known only to the illegal possessor. Had wills been founded on natural rights, the decision in this case would have been just the reverse; for, then the requirements of

240 What are the advantages of wills?

241 What is meant by saying a will is informal?

242 Of what effect is such a will? Why? 243 Give an example.

244 Why must not the intention of the testator be followed?

245 How is this right lost?

246 What is the consequence of such loss?

247 What rule of morality will this lead to?

248 Would this be the case if the devising of land was a natural right? Why?

the law would seem rather to refuse its assistance to enforce the right of the devisee, than to deny or work any alteration in the right itself; and consequently, I should consider them unjust.

[“The transmission of property by hereditary descent, from the parent to his children, is the dictate of the natural affections; and Doctor Taylor holds it to be the general direction of Providence. And nature and policy have generally concurred to introduce and maintain this primary rule of inheritance, in the laws and usages of all civilized nations. But the distribution among the children has varied greatly in different countries; and no two nations seem to have agreed in the same precise course of hereditary descent; and they have very rarely concurred, as we have done, in establishing the natural equality that seems to belong to lineal descendants standing in equal degree.”—*Kent's Commentaries*, vol. 4, page 376.]

In the disposal of property, the regard due to kindred not lineal, arises either from the presumed intention of the ancestor from whom we received our fortune, or from the expectations we have encouraged. The intention of the ancestor is presumed with greater certainty, in proportion to the nearness of the relation. For instance, it may be presumed to be a father's intention, that the inheritance which he leaves for one son, should, if that son dies childless, remain a provision for the families of his other children. Whoever, therefore, gives to strangers what he has received from kindred, is guilty, not so much of unkindness to the parties not receiving, as of ingratitude to the party from whom the property came. Where a man has acquired property by his own exertions, and at the same time has refrained from exciting the expectations of relations, he is perfectly at liberty to dispose of his property, uninfluenced by consanguinity and affinity; for these are merely forms of speech, imposing no moral obligation to do any particular act.

249 What is said of hereditary descent?

250 By what has this primary rule been sustained?

251 Has this distribution always been equal?

252 Is it the case in this country?

253 By what is occasioned the descent of property to those who are not lineal descendants? Give an example.

254 What follows from this view of the subject?

255 What right has a man in devising property which he has acquired himself?



There is, however, one particular reason for providing for poor relations, which is, if we do not, no one else will.

[“In this country we have much statute regulation on the subject. There is no doubt that the testator may, if he pleases, devise all his estate to strangers, and disinherit his children. This is the English law, and the law in all the states, with the exception of Louisiana. Children are deemed to have sufficient security in the natural affection of parents, that this unlimited power of disposition will not be abused. If, however, the testator has not given the estate to a competent devisee, the heir takes, notwithstanding the testator may have clearly declared his intention to disinherit him. The estate must descend to the heirs, if it be not legally vested elsewhere.”—*Kent's Commentaries*, vol. 4. page 525.]

To neglect to make a will is a culpable omission, when it occasions an equal distribution of what ought to be distributed unequally on account of the situations of the parties, or where it leaves an opening for litigation.

As the *right* of succession is founded on law alone, so the *claims* of succession in cases where there is no will, must be regulated by law alone.

These regulations ought to be guided by the duty and presumed inclinations of the deceased. The law of descent, which is founded on the English statute of distributions, is sufficiently equitable. It assigns one-third to the widow, and two-thirds to the children; in case of no children, one-half to the widow, and the other half to the next of kin: where neither widow nor lineal descendants survive, the whole to the next of kin, and to be equally divided amongst kindred of equal degree, without distinction of whole blood, and half-blood, or of consanguinity by the father's or mother's side.

[“In a majority of the states, the descent of real and of personal property is to the same persons, and in the same proportions. Such a uniform rule in the descent of both real and personal property, gives simplicity and symmetry to the whole doctrine of descent. The English statute of distributions,

256 Has a man a right to disinherit his children ?

257 When is it wrong to neglect making a will ?

258 How is succession regulated if there is no will ?

259 On what principle should the law be formed ?

260 What is the English statute of distributions ?



being founded in justice, and on the wisdom of ages, and fully and profoundly illustrated by a series of judicial decisions, was well selected, as the most suitable and judicious basis on which to establish our American law of descent and distribution."—*Kent's Commentaries*, vol. 2. page 427.

261 What is Kent's remark concerning that statute?

262 What was occasioned by these good qualities?

## BOOK III.—PART II.

## RELATIVE DUTIES, WHICH ARE INDETERMINATE.

## CHAP. I.—CHARITY.

By charity is here intended, not bounty to the poor, nor, as St. Paul means, benevolence in general ; but the promoting of the happiness of inferiors.

Charity, in this sense, is the result of religion, or virtuous habits ; for while worldly interests regulate our behavior to superiors and equals, humanity alone can influence our conduct to those beneath us.

The happiness of inferiors may be promoted by, 1. the treatment of dependents ; 2. professional assistance ; 3. pecuniary bounty.

## CHAP. II.—ON TREATMENT OF DEPENDENTS.

A party pursuing a journey together, find it for their interest that one should wait on the rest, a second seek out lodging, a third take charge of the horses and baggage, and a fourth bear the purse, and regulate the route ; not forgetting that they were equals at the commencement, and will be so at the end of the journey. In this case, he whose lot it is to direct the rest, finds himself bound to study the feelings of his fellow-travelers, by giving his commands mildly, and using their service discreetly. So in the journey of life, they whom the Creator has made dependents, ought to be treated with the consideration due to equals in the eye of God.

Some think that the obligation from the inferior to the superior is greater than contrariwise ; but this is a mistake. The rich man does not maintain his servants, tradesmen, tenants, and laborers ; the truth is, that in one sense, they maintain

263 What is meant here by the term "charity?"

264 From what does this kind of charity spring?

265 By what is our behavior regulated in general?

266 What are the three principal methods of promoting the happiness of inferiors?

267 How may the subject be illustrated?

268 What treatment of dependents does this illustration teach?

269 Is social obligation, from the rich or from the poor?

him. It is by their industry that his food, house, dress, and luxuries, are obtained. It is not the estate, but the labor employed on it, that pays the rent. The proprietor merely distributes what others produce.

Others, in extenuation of unkind conduct to inferiors, say, that kind usage is thrown away on persons of low estate ;— that they are insensible of kindness, and incapable of gratitude. But all men, high or low, have, and must have the same perception of the manner in which they are treated ; though all may not exhibit similar perceptions of gratitude, either in kind or degree.

As we are bound to refrain from diminishing the sum of human happiness, we have no right to increase the uneasiness of domestics and dependents, by unnecessary occupations, or by ill treatment in deed or word, or by the refusal of harmless amusements.

#### CHAP. III.—SLAVERY.

Servitude differs from slavery in this, that the servant contracts to work for his master, while the slave is, without such contract, compelled to labor ; but in both there is the same obligation on the part of the master, not to diminish, beyond absolute necessity, the sum of human happiness.

Hence, as slavery may arise from, 1. crimes ; 2. war ; 3. debt ; it must cease as soon as the crime is expiated, or the quarrel settled between the nations at war, or the creditor legally satisfied.

But the slave-trade is not advocated on any of these principles, and consequently it is morally wrong.

Yet even if the purchase were defensible, the trade is still chargeable, 1. with the crime of exciting the native slave-sellers to war and rapine for the purposes of trade ; and, 2. with the cruel treatment shown to the slaves in their passage from Africa to America.

270 What is another erroneous opinion ? Why is it erroneous ?

271 From what are we forbidden by the rule of not diminishing the sum of human happiness ?

272 What is the difference between servitude and slavery ?

273 What requirement resting on the master is common to them both ?

274 What three causes may justly occasion slavery ?

275 How long must it continue under each case ?

276 On which of the three principles is the A follows from this fact ?

277 With what two crimes is it chargeable ?

But necessity, the name under which iniquity is ever attempted to be justified, has been pleaded for the continuance of the traffic. Yet it has not been shown that the land could not be cultivated in the slave-holding countries as it is elsewhere, by free labor alone. It could not, perhaps, be cultivated so cheaply, but the difference of cost is a question of convenience; not of such necessity, as can alone justify an act otherwise immoral.

But it is said, that, although slavery existed in the very countries where Christianity was first promulgated, the Christian Scriptures do not prohibit it.

This is true; but it is unjust to infer from this silence, that Christ deemed all the then existing institutions right, or that he forbade the worse to be bettered.

Besides, Christianity purposely refrained from intermeddling with any civil institutions, through the fear of impeding its progress; much more, when, as in the present instance, it might endanger its existence, by making it liable to the reproach of exciting a servile war by preaching that slavery is unlawful.

With regard to slaves, their emancipation must be gradual, and accompanied with the diffusion of Christianity, under whose mild influence all parties will be prepared to see and correct the wickedness and folly of their present institutions. In this way the slavery of the Greeks and Romans, and subsequently that of the feudal times, disappeared. And we trust that as knowledge and religion are gradually extended, they will banish what remains of this odious institution.

#### CHAP. IV.—PROFESSIONAL ASSISTANCE.

This kind of charity can be exercised best by members of the legislature, and magistrates, or by persons of the medical, legal, and clerical professions.

1. By members of the legislature, charity may be exerted

278 What has been pleaded for the continuance of the traffic?

279 Is this excuse real?

280 What is said of the pecuniary advantage of the trade?

281 What palliation for the business has been adduced?

282 Is the inference drawn from this correct?

283 What is the probable reason that it was not prohibited?

284 In what manner should emancipation be conducted?

285 From whom is professional aid to be expected?

286 How may members of the legislature exert their charity?

in endeavoring to remedy the abuses and imperfections connected with the administration of law generally; and especially of such particular laws as relate to the poor. To this last requisite every government is bound; and that the more, because the rich can take care of themselves.

2. As magistrates, men of moderate means and education may, by interposing official authority and personal influence in behalf of the poor, place out the single talent intrusted to them to great account; particularly when those who have the care of public relief, are led from interested motives, to dole it out too sparingly, or even to deny it altogether.

3. By medical men, much good may be done at a little cost. Health, which is precious to all, is to the poor invaluable; and may be restored by the timely application of drugs which cost little, and of advice which may be considered as costing nothing when the patient is unable to pay for it.

4. Much of the loss of money, time, and temper, produced by a law-suit, may be prevented amongst the poorer sort of litigants, by any man, who to a knowledge of law adds the wish to reconcile differences impartially. Counsel also given seasonably will often keep or extricate the uninformed out of great difficulties.

Lastly, as clergymen, the greatest good may be effected by a judicious use of the means they possess of regulating the moral conduct, and satisfying the thoughts of the poor.

#### CHAP. V.—PECUNIARY BOUNTY.

1. The obligation to bestow relief upon the poor.

Whether pity, or that feeling which prompts us to relieve misery, be an instinct or habit, is not material. It exists in fact; and was doubtless intended by the Creator to remedy those inequalities of condition, which, as God foresaw, must follow every general rule for the distribution of property.

But independent of this presumed intention of the Creator,

287 To what is every government bound? Why?

288 How may men of moderate fortune be very useful?

289 How may medical men do much good?

290 How may lawyers assist the poor?

291 How may the poor be benefited by clergymen?

292 How may this benefit be compared with others?

293 What is the subject of the first inquiry, as regards pecuniary bounty?

294 What may be said upon pity?

295 For what is it probably intended?



the poor have a claim for relief, founded on the law of nature ; for as all things were originally common, none could have a greater right than another to a particular possession. Hence, when a partition did take place for the public good, it must have taken place on the condition, that every one should have a sufficiency, as intended by the Creator. But as no fixed laws can anticipate every case of distress that may arise, these cases were supposed to be left to the bounty of those who were benefited by such previous partition. And, consequently, to deny the claims of such distress, is to act morally wrong, by opposing the will of that Creator, who has filled the world with plenteousness for the support and comfort of his creatures.

On this duty the Christian Scriptures are more explicit than on almost any other. The forcible language of Christ, as applied to the good at the day of judgment, establishes the obligation of bounty beyond controversy. "I was an hungered, and ye gave me meat ; I was thirsty, and ye gave me drink ; I was a stranger, and ye took me in ; naked, and ye clothed me ; I was sick, and ye visited me ; I was in prison, and ye came unto me." Matt. xxv. 35. These words equally demonstrate how important these duties are in the sight of God, and what effect they will have upon his decisions.

The apostles also inculcate the same doctrine ; and their recommendations have probably given rise to those numerous public charities, which are founded in Christian countries, but not mentioned as existing elsewhere. To which may be added, as resulting from the gospel, a spirit of private liberality, and even a legal provision for the poor ; the last not so much as thought of amongst the most humane nations of antiquity. So great indeed was the effect produced on this very point by the promulgation of Christianity, that many, believing in the doctrine of a community of goods, sold all they possessed, and gave the produce to the apostles to distribute amongst the poor. Acts iv 32.

296 What claims have the poor from the law of nature

297 How then, in justice, could a partition take place ?

298 How could a sufficiency for every case be provided for ?

299 What inference do we derive from this ?

300 Do the Scriptures treat of this duty ? In what language ?

301 What is shown from this passage ?

302 What has resulted from these Scripture injunctions

303 What effect had they on the first converts ?

This conduct, however, of the primitive Christians, although it manifested a strong proof of their sincere zeal, is not to be considered as a precedent for our imitation. For it was followed nowhere else, and was never enjoined by the Scriptures; and, besides, although it may be suited to a small society, it is quite impracticable in a large community.

On the other hand, the conduct of the apostles deserves our unqualified approbation; for, so far from taking advantage of such confidence to enrich themselves, they were content to transfer the custody and distribution of the fund to the deacons appointed for that purpose by the converts themselves. Acts vi. 2.

With regard to the habit of bounty, St. Paul recommends *the being charitable upon a plan*. "Upon the first day of the week, (or any other stated time,) let every one of you lay by in store, as God has prospered him." That is, we should appropriate to charitable purposes such sums as we can spare, not from mere superfluities; but by acts of reasonable self-denial.

## II. The manner of bestowing bounty.

In all questions respecting the kind of charity, the sum is supposed to be the same; and the objects equally deserving.

There are three methods of bestowing bounty.

1. The best kind of charity is to bestow the amount in stated sums, and to a few individuals with whose circumstances we are acquainted. A sum of money bestowed in this way will do more good than it will if it is doled out in dribblets to many. By the first plan a permanent good may be effected; by the last, only a temporary evil can be avoided. Besides, a pension or annuity paid regularly, will produce greater happiness than the same sum given piecemeal, or paid irregularly, by preventing not only much actual want, but what is scarcely less painful, the dread of it.

2. Where the giver does not himself know of proper ob-

304 Is this conduct a precedent for us? Why?

305 What was the apostles' conduct on that occasion?

306 What is St. Paul's direction for charitable conduct?

307 How may this direction be explained?

308 What is the second inquiry concerning pecuniary bounty?

309 In the succeeding questions on this subject, what shall we suppose?

310 How many kinds of charity may we recommend?

311 What is the first kind? Why is it the best?

312 What recommendation is attached to a pension or annuity?

jects, the next best plan is to bestow the money on some public charity ; for, by this method, the benefaction will diffuse more extensive benefit than it can do by any private and separate application. For instance, a few dollars given to an infirmary becomes the means of providing all that is requisite for the patient ; but will go but a little way, if given to the patient himself.

3. The last and lowest exertion of benevolence is relief to beggars. But though indiscriminate charity of this kind is not a virtue, I would not approve of its indiscriminate omission. For, some may be overtaken by distress for which all other relief would come too late, and may thus perish through our disregard of their real sufferings. Besides, such conduct is morally wrong ;—not so much from the act itself, as from the tendency it has to produce indifference to distress.

There are other kinds of pecuniary charity, where much good may be done at a little cost ; as in times of scarcity, or severity of seasons, by the sale of articles of necessity at a price within the reach of the poor ; and by other expedients to meet temporary difficulties, which the occasions themselves will suggest. Again, the proprietors of estates may greatly increase the happiness of the poor, by employing them in various occupations, especially those connected with the cultivation or improvement of the soil. If the profits of these undertakings do not repay the expense, the proprietors may fairly put the difference to the account of charity ; and if the loss can be spared, the consideration that the public has been benefited is sufficient to satisfy a man of benevolent intentions.

A question has been started, whether works of charity ought to be done secretly or not. It is true, secrecy has been enjoined by Christ, Matt. vi. 3. ; but the secrecy there intended is opposed to ostentation, and the injunction has reference rather to the motive than to the manner of the act, ver. 1, 2. Charity, to be meritorious, must spring from a

313 What is the next best plan ? Why is it a good plan ?

314 What is the least laudable kind of benevolence ?

315 Should it be entirely rejected ? Why ?

316 What bad effect upon the rejector would the rejection cause ?

317 What other kinds of charity are commendable ?

318 What charitable plan may be adopted by the wealthy ?

319 What is the intention of the Scriptures as to secrecy in works of charity ?

320 What constitutes the merit of charity ?

desire to please God, and not to gain the applause of men. Hence, if the motive be not ostentation, the act not only may, but ought to be public, when, by such publicity, the ends of the charitable object are more successfully attained. And this doctrine is supported by the exhortation to let our good works shine before men for the glory of our Father in heaven. Matt. v. 16.

Since, then, the propriety of secrecy or publicity depends on the motive, the former must be adopted, when we cannot produce a good effect by our example; the latter, when we can.

III. The pretences by which men excuse themselves from acts of bounty.

1. "That they have nothing to spare." But this will hold good only, when, after every effort of self-denial has been made, there remains barely enough for their necessities.

2. "That Scripture charity does not mean pecuniary bounty." This is refuted by the language of St. James, ii. 15. "If a brother or sister be naked and destitute of daily food, and one of you say, Depart in peace; be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit?"

3. "That in St. Paul's definition of charity, 1 Cor. xiii. almsgiving is not included." But the charity there intended is general benevolence.

4. "That they pay for the support of the poor." But to such support, the poor have the same right as the objector himself has to the remainder of his property; hence, such payment is no bounty.

5. "That they employ many poor persons." If such employment be given only for the benefit of the poor, and not for themselves, the plea is good; otherwise, not.

6. "That the poor do not suffer so much as we imagine;

321 What laudable motive may there be for doing alms in public? Where is the proof of it?

322 What results from this view of the subject?

323 What is the third topic in this chapter?

324 What is the first excuse? How is it answered?

325 What is the second excuse? How is that answered?

326 State the third excuse, and its answer.

327 Mention the fourth excuse, and its answer.

328 What is the fifth excuse, and what remarks upon it?

329 What is the sixth excuse, and its answer?



because, from their state of habitual poverty, they have less acute feelings than the rich." But habit cannot destroy the sense of the pain of hunger and cold. But if it could, the question is not how unhappy any one is, but how much more happy we can make him.

7. "That the poor are ungrateful." This is not true; and if it were, our compliance with duty is not for the sake of their thanks.

8. "That impositions are practised by the poor." If due inquiry be made, *our* merit is the same; the deception may be in the representation, but the distress will probably be real.

9. "That the poor should apply to the proper civil officers." This is not always practicable; or if it is, the authorized public relief may not meet the nature of the case.

10. "That alms-giving encourages idleness and vagrancy." Not if judiciously done.

11. "That there are other charities which are nearer home, or more useful, or stand in greater need." This plea is good, if such greater claims be in fact attended to.

Beside all these excuses, pride, or prudery, or delicacy, or love of ease, prevent one-half of the world from knowing what the other half suffer.

#### CHAP. VI.—RESENTMENT.

Resentment is either passive anger or active revenge, or both together. By the former, is meant the pain felt on the receipt of an injury; by the latter, the desire to inflict on the offender a pain greater than is required by the injury received. Although we cannot quell, we may still modify the principle of anger; and more especially, we are able to suspend its effect. These two applications of the mind lead us to treat of anger and revenge separately.

330 The seventh excuse, and its answer.

331 Give the eighth excuse, and the remarks upon it.

332 The ninth, and remarks.

333 State the tenth, and its answer.

334 State the eleventh excuse, and remark upon it.

335 Are there any other hinderances to charity?

336 How may resentment be distinguished?

337 Define anger.—Define revenge.

338 What remarks upon the two?



## CHAP. VII.—ANGER.

Anger is sinful, when conceived on slight provocations, or when long continued.

1. "Charity suffereth long, and is not easily provoked." "Let every man be slow to anger." See also Gal. v. 20. The Christian's duty is thus plainly marked out, not to take offence on slight grounds.

2. "Let not the sun go down upon your wrath." This precept is equally plain and positive as to our anger being shortlived.

But as these precepts presume that the passion of anger is in our power, and we know that a passive feeling is not, they must be understood as enjoining us, not so much to appease our wrath at the time, as to mollify our minds by habits of reflection so as to be less irritated by the receipt of an injury, and to be sooner pacified.

Such sedatives of anger are furnished partly by philosophy and partly by religion. The former suggests reflections on the inutility of anger with reference to the act done, and the folly of dwelling on injuries, painful only in the recollection; the latter suggests the fear, that if our offences before heaven are to excite the same implacable feelings of anger in God, as we show to the offences of our fellow creatures, our hopes of happiness will be slight indeed: while both conspire in teaching us to put the most favorable construction on the motives of others, and the least stress on our own feelings, interests, and views; to endeavor to ascertain what would have been the conduct of both parties had they changed places; and to consider whether he, who seems to have done the wrong, but repented of it, be not in reality less to blame, than he, who having received the injury, will not forgive it; and to reflect on the indecency of extravagant anger, and how it renders us the sport of the bystanders; and, finally, to determine whether, if there were just grounds

339 When is anger sinful?

340 How is the first case shown?

341 What precept confirms the second?

342 What do these precepts suppose?—Is it so entirely?

343 How then must they be understood?

344 What sedatives of anger are furnished by philosophy?

345 What are furnished by religion?

346 What are we taught by both?

for the anger at its commencement, there can be any now to warrant its continuance.

## CHAP. VIII.—REVENGE.

All pain inflicted on an offender, further than what may procure reparation to the injured, or promote the design of punishment, is so much revenge.

There is no difficulty in knowing when we inflict pain; and still less, when we do so through revenge. For if punishment alone be the object, we proceed with reluctance; if revenge, we afflict with pleasure.

It is *probable* from the light of nature that a passion, whose object is to give pain, is disagreeable to the will of the Creator. Other passions may produce pain by accident, this does so by design: and we think that the Creator has willed nothing to produce pain designedly. This probability becomes a *certainty*, if we credit the Christian Scriptures, where forgiveness, the opposite to revenge, is specially enjoined.

By comparing the language used in the following passages it will be seen that revenge is forbidden in any shape; and further, that we are even required to do good to our very enemies.\* “If ye forgive men their trespasses, your heavenly Father will also forgive you; but if ye forgive not men their trespasses, neither will your Father forgive your trespasses.”—“And his Lord was wroth, and delivered him to the tormentors, till he should pay all that was due unto him; so, likewise, shall my heavenly Father do also unto you, if ye from your hearts forgive not every one his brother their trespasses.”—“Avenge not yourselves, but rather give place unto wrath; for it is written, vengeance is mine; I will repay, saith the Lord. Therefore, if thine enemy hunger, feed him; if he thirst, give him drink: for in so doing thou shalt heap coals of fire on his head.”—“For,

347 What may be included in the idea of revenge?

348 How do we know whether we act for punishment or for revenge?

349 What is probable from the light of nature? Why?

350 What confers certainty upon this opinion?

351 How far is this doctrine carried in the Scriptures?

352 Repeat some of the proofs.

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\* Matt. vi. 14, 15; xviii. 34, 35. Rom. xii. 19, 20. Col. iii. 13.  
See also Ex. xxiii. 4.

bearing one another, and forgiving one another; if any man have a quarrel against any, even as Christ forgave you, so also do ye."

But the injunctions in favor of forgiveness do not interfere with the prosecution of public offences. From the language of Christ, "If thy brother, who has trespassed against thee, neglect to hear the church, let him be unto thee as an heathen man and a publican,"\* it is plain that he assents to, and sanctions a proper discipline established in civil and religious societies, for the restraint or punishment of criminals.

But, if the magistrate be permitted to punish, so is likewise the prosecutor; for the office of the latter is as necessary as that of the former.

Nor, by parity of reason, are private persons prohibited from the correction of vice, provided they are provoked by the injury done to others, and uninfluenced by any feelings of a private pique towards the offenders.

Thus, it is no breach of Christian charity to withdraw ourselves from persons, with a view to discountenance any conduct that we deem immoral. This is authorized by St. Paul, 1 Cor. v. 11.

Although we are forbidden to resent an injury, we are not required to expose ourselves to a repetition of it; for this would be to encourage the acts of the offender to his own ruin.

When a benefit can be conferred only upon one, or few; if it is our duty to confer it on the most deserving, the choice must be made without reference to the person so chosen being a friend or foe: but if only a proper object, and not necessarily the most deserving, be required, then we are not bound to prefer a foe to a friend.

Christ, who estimated virtues by their utility, lays the greatest stress on the virtue of forgiveness; knowing that the private feuds which disturb the intercourse of life, and make

353 Are we then forbid to prosecute for crimes committed against us?

354 How is the negative of this question proved?

355 What do we argue from the magistrate's being permitted to punish? Why?

356 What should be our motive in correcting vice?

357 How may we discountenance vice? What authority for this?

358 What is our duty when we wish to confer a benefit on one only?

359 How was the virtue of forgiveness esteemed by Christ?

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\* Matt. xviii. 17.

up half its misery, owe their origin to the want of a forgiving temper.

## CHAP IX.—DUELING.

Dueling, as a punishment, is absurd; for it is an equal chance whether the punishment fall on the person offending, or on the one offended. Nor is it much better as a reparation, for it tends neither to undo the injury, nor to afford a compensation for the damage that is sustained.

The truth is, it is not considered either as a punishment or as a reparation. But as the law of honor calls the man a coward, who submits patiently to an affront, the duel takes place not to satisfy the parties, but to prevent or wipe off this suspicion.

The unreasonableness of the rule is one thing; the duty of the parties, while such a rule exists, is another.

Then, the question is, whether a regard for our reputation is, or is not, sufficient to justify the taking away of one another's lives. It is not. For,

1. Murder is forbidden; and life deliberately taken away, except by public authority, is murder. The value and security of life make this rule necessary; for any other would admit all the mischiefs arising from bloodshedding by private hands.

2. If divine laws are to be thus abrogated by human laws, all morality that is founded on the divine will is at end; and fashion may, at one time or other, annul the obligation of every duty.

“But the sense of shame is insupportable.” So is that of hunger. If, then, the former can extenuate murder, so can the latter: yet this finds no advocates, and neither should the other.

Take away the chance of falling himself, and the duelist

360 What may be said of dueling as a punishment? Why?

361 Is it any better as a reparation? Why?

362 Is it actually resorted to on either of these accounts?

363 How then is it occasioned?

364 Under what two considerations may it be treated?

365 What question shall we discuss? How is it answered?

366 What is the first reason against dueling?

367 What will result from causing human regulations to set aside divine laws?

368 What excuse is offered? And how answered?

369 What would render the duelist an assassin?



becomes the assassin; add it, and even then, the difference is only that fewer will adopt the practice. But a highwayman, who knows that the party whom he intends to rob is armed like himself, may plead the same extenuation; yet his boldness affects not his criminality.

In expostulating with the duelist, I suppose that his adversary will fall, which, in my argument, is a fair supposition; for if he has no right to kill, he has none to make the attempt. On the other hand, I do not urge the Christian principle of the forgiveness of injuries; for on this point he may be guiltless, and be acting only with a wish to save his honor.

In this view of the question, the difference between the parties is none; for both are influenced by the same law of honor, and both incur an equal hazard of committing murder.

But as public opinion is not easily controlled by civil institutions, the custom will continue, till some plan be found to take away the reproach of cowardice, attached to patience under insult and to a refusal to fight.

The insufficiency of the law of the land to meet cases now settled by the law of honor, causes many to seek redress, attended even with the chance of death, rather than to subject themselves to the ridicule which is thrown on the sufferer by seeking compensation in a court of law.

For the army or navy, where the law of honor is rigorously enforced, a court of honor might be established, with power to award such submissions on the part of the offender, as a duel is intended to obtain: and it might become the fashion for others, not of those professions, to refer their quarrels to this tribunal.

#### CHAP. X.—LITIGATION.

“If it be *possible*, live peaceably with all men.”\* Whence it appears, that it is not *always* possible to do so. But it

370 What difference is made by adding that chance?

371 Does this take away the criminality? Give an example.

372 On what is the argument against dueling founded? Why?

373 Can we urge on the duelist the duty of forgiveness? Why?

374 Does this view of the question apply to one or both parties?

375 How can the custom be discontinued?

376 What has frequently caused this practice?

377 How might this be remedied?

378 Is it always possible to live peaceably with others?

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\* Rom. xii. 18.



will be said, that Christ has enjoined us, "If an enemy smite thee on the right cheek, to turn to him the other also."\* But this is rather a proverbial description of patience, than a positive rule of conduct, as may be inferred from the conduct of Christ himself, who, when struck by a police-officer thus rebukes the offender: "If I have spoken evil, bear witness of the evil; but if well, why smitest thou me?"†

A rule which forbade all opposition to injury, would have a tendency to give a license to insult; because some would feel that they were bound by it, whilst others would despise it, and live in continual depredation on the conscientious. Hence St. Paul, who strongly felt and inculcated the necessity of forbearance and forgiveness, never requires an unresisting submission to every injury; and the same apostle, who reproved the litigiousness of the Corinthian converts,‡ took refuge in the laws of his country and in the privileges of a Roman citizen, from the violence of the Jews,§ and from the injustice of the chief captain.||

But if the injury, personal or public, be small, or the punishment likely to be disproportioned to the offence, then the Christian, because he is debarred of all vindictive motives, is bound not to go to law.

On the other hand, a lawsuit may be instituted on occasions of importance,—1. To decide an uncertain right of consequence; 2. To obtain reparation for some considerable damage; and, 3. To prevent the repetition of the injury.

But, as justice is the sole object, the means must be morally correct, and a process the most simple and direct must be adopted; such as a reference to arbitration, or an agreement to settle the dispute by mutual concessions. Nor

379 What injunction was given by the Savior?

380 How is that to be understood? What authority?

381 What would be the tendency of a rule forbidding all opposition to injury? Why?

382 What was the conduct of St. Paul?

383 In what cases is the Christian bound to refrain from going to law? Why?

384 In what three cases is it allowable?

385 How should a prosecution be conducted?

386 What means may be adopted?

\* Matt. v. 39.

† John xviii. 23.

‡ 1 Cor. vi. 7, et seq.

§ Acts xxv. 11.

|| Acts xxii. 25.

can either party morally have recourse to law, or prolong a suit, unless he thinks that his case is founded on right, and not dependent on the uncertainty of the decision; nor has he a right to take any steps to distort or prevent evidence likely to make against himself.

In criminal prosecutions, the private injury must be lost sight of, and the sufferer must feel as if he is only the official prosecutor, acting for the public welfare. But, in the same degree, he is bound to prosecute whenever the interests of the community require the punishment of the offender; because it will not be done but through his instrumentality.

In offences against the morals of society, where the prosecution concerns the whole neighborhood, it is not binding on any one individual; but there is merit, however, in his becoming the prosecutor, if he so act on the ground of public good, and not to gratify some private pique merely.

The character of an informer is undeservedly accounted odious. But when a good man can promote by his activity the observance of laws of general utility, he will despise that unreasonable prejudice; or show, by giving away his share of the penalty, that he is uninfluenced by the pecuniary reward. But when he takes advantage of enactments disregarded because useless or obsolete, he acts morally wrong; because he wilfully misapplies a rule to a case which the law did not intend to embrace.

#### CHAP. XI.—GRATITUDE.

The mischief of ingratitude consists in its tendency to discourage voluntary beneficence. Nor is the mischief small; for much of the happiness of society depends on those offices of kindness, of which laws cannot compel the performance, and for which morality can suggest only faint motives.

Another reason for cultivating a grateful temper towards

- 387 Of what are both parties disallowed?
- 388 How should criminal prosecutions be conducted?
- 389 What else will this feeling inculcate? Why?
- 390 What may be said of offences against society at large?
- 391 What may be said of an informer's character?
- 392 What effect will this have upon a good man?
- 393 When does the informer act wrong? Why?
- 394 In what consists the mischief of ingratitude?
- 395 What may be said of this mischief? Why?
- 396 What is another reason for cultivating a grateful temper?

man, is in its tendency to produce a similar feeling towards God; and thus to become a source of one of the most exalted virtues.

This duty is not, as sometimes supposed, omitted in the Christian Scriptures; for the precept 'to love God because he first loved us,' both acknowledges the existence of the principle of gratitude, and directs it also to its highest object.

As there are no limits to the occasions and feelings of gratitude, so there can be none for the ways of expressing it.

We are not, however, bound by a principle of gratitude to do any act morally wrong; because the prohibition against such act is not only greater than the claim of gratitude, but also antecedent to it. But to plead a conscientious scruple for non-performance, when such does not really exist, is to add hypocrisy to ingratitude; and to bring upon honest non-compliance the suspicion of being a dishonest one.

To upbraid a man with the favors he has received, is ungenerous; but infinitely more so to require of him, in return for such favors, any mean and dishonest compliances.

#### CHAP. XII.—SLANDER.

Speaking is really acting, but under another name. Now, as deeds are estimated according to our intentions, words must be tried by the same rule. The mischief is the same, though the means may differ. Hence, Christ declares (Matt. xii. 37) "by thy words thou shalt be justified, and by thy words thou shalt be condemned;" that is, by words as well as deeds; for both are equally capable of producing good and evil.

Slander is either malicious or inconsiderate.

Malicious slander is the assertion of either truth or falsehood, with a view to do evil.

Slander generally means the promulgation of a malicious

397 Is gratitude inculcated in the Scriptures?

398 To what can we not be bound by feelings of gratitude? Why?

399 How may this excuse be considered when groundless?

400 What may be said of upbraiding men with the favors they have received?

401 What may speaking be considered in effect?

402 What follows from this?

403 What does our Savior say of speaking? Explanation.

404 How is slander distinguished?

405 What is malicious slander?

406 Give some explanation of the idea signified by "slander."

falsehood; but if the truth be told with a malicious view, that is slander also, though its guilt is less than if united with falsehood.

By slander ought to be meant the production of *gratuitous mischief*. For if any feelings of self-interest interfere, to be attained by a falsehood, the act is a *fraud*; if we serve our interest by truth, unless it is accompanied by some immoral act, such as breach of promise or betrayal of confidence, it is not criminal.

Whether a person be affected directly by the scandal, or indirectly through another connected with him, the guilt must be measured by the misery intended to be produced; and the disguises under which slander is concealed are only so many aggravations, as they indicate more deliberation and design.

Inconsiderate slander is less criminal, although it may actually produce the same mischief. But at the same time, it is not free from guilt; for, the offender cannot be exonerated by the plea that he had no design to injure; because he is bound to keep such a check on his words as to prevent even indirect mischief to others.

Information given for the sole purpose of caution is not slander.

On the other hand, indiscriminate praise is the opposite extreme of slander; and though it is apparently the excess of candor, it generally proceeds either from a frivolous understanding, or a contempt for all moral distinctions.

407 What should be intended by the use of the word? Why?

408 How must we measure the guilt of slander?

409 What may be said of any disguise under which slander may be concealed? Why?

410 What is the guilt of inconsiderate slander?

411 Why is it criminal at all?

412 What is not slander?

413 What may be said of indiscriminate praise?

## BOOK III.—PART III.

## RELATIVE DUTIES, WHICH RESULT FROM THE CONSTITUTION OF THE SEXES.

THE constitution of the sexes is the foundation of marriage. Collateral to the subject of marriage, are chastity, incest, polygamy, and divorce.

Consequential to marriage, is the relation and reciprocal duty of parent and child.

## CHAP. I.—USE OF MARRIAGE INSTITUTIONS.

The use of marriage consists in its promoting the following beneficial effects :

1. The private comforts of individuals ; of the female sex especially. All, perhaps, are not interested in this reason ; but, as whatever adds to the happiness of the majority is binding on the whole, all are bound to abstain from any conduct that would tend in its general consequence to the obstruction of marriage.

2. The preservation and education of the greatest number of children.

3. The peace of society, by preventing the contention that would otherwise ensue amongst several men for the possession of one woman.

4. The improvement of society, by the formation of separate families, and by appointing one master over each. This authority has more influence than all civil authority put together.

5. The additional security of the state, founded in the soli-

414 What does the constitution of sexes lead to ?

415 What subjects are collateral to marriage ?

416 What ethical subjects in consequence of marriage ?

417 What is the first beneficial effect of marriage ?

418 How will this reason effect those who are not interested in it as concerns themselves individually ?

419 What is the second beneficial effect ?

420 What is the third ?

421 What is the fourth ?

422 What effect has parental authority ?

423 What is the fifth benefit ?



citude of persons for the welfare of their children, and in their restriction to fixed habitations.

#### 6. The encouragement of industry.

Of the utility of marriage, some ancient nations were more sensible than the moderns are. The Spartans checked celibacy by penalties, and the Romans encouraged matrimony by conferring privileges upon persons who had three children. A man who had no child could not, by the Roman law, claim but the half of a legacy left to him.

Marriage between brothers and sisters, and between any who usually live in the same family, may be said to be forbidden by the law of nature. Restrictions which extend to remoter degrees of kindred than thus described, are founded only in the positive law which ordains them; and, when so made, must be justified by their tendency to promote general good.

[Ecclesiastical law, wherever it has had authority or influence, has prohibited matrimony between near relations by blood or marriage.] The Levitical law, from which these prohibitions were deduced, and also the Roman law, prohibit marriage between relations that are within *three* degrees of kindred, computing the generations, not from, but through the common ancestor, and accounting affinity the same as consanguinity.

The Egyptians are said to have permitted the marriage of brothers and sisters; but among the Athenians, although brothers and sisters of half blood on the father's side could marry, those on the mother's side could not. The same custom probably obtained in Chaldea in the time of Abraham; for he and Sarah his wife stood in this relation to each other. "And yet, indeed, she is my sister; she is the daughter of my father, but not of my mother, and she became my wife." Gen. xx. 12.

[In several of the United States, marriages within the Levitical degrees are made void by statute; but in others, there

424 The sixth?

425 What opinions had the ancients on the utility of marriage?

426 What marriages are forbidden by the law of nature?

427 On what are any other restrictions founded?

428 What prohibitions were made by the Levitical law?

429 What were allowed among ancient nations?

430 What legal provision is made in the United States upon subject?

is either no law upon the subject, or the prohibition extends only to relations by blood in the lineal, (i. e. ascending and descending,) and to brothers and sisters.]

The Roman law continued the prohibition to the descendants of brothers and sisters without limits.

#### CHAP. II.—POLYGAMY.

The equality\* in the births of males and females intimates God's intention to assign one woman to each man; for if one man possesses exclusively many women, many men must be deprived of their right to a partner. Besides, had God intended polygamy, he would, probably, have given Adam more than one wife.

Polygamy, besides being at variance with nature's law and God's apparent design, produces effects injurious to society, by giving rise to contests amongst the different wives of one husband, whose affections are thus distracted or lost.

Besides, where polygamy prevails, men become weak in body and depraved in mind; wives are considered as mere conveniences to their husbands; and children are neglected;—for it is plain that the same number of children can be better supported by the united exertions of many fathers, than by those of one alone.

Whether polygamy was permitted by the Mosaic law is doubtful.† But, whether permitted or not, it was practised by the patriarchs both before that law and under it. The permission, if given, was probably given as an indulgence to prejudices, and not because it was morally correct. The practice appears to have been discontinued before the time of our Saviour, as there is no hint in the New Testament of its existence.

431 What general fact has a bearing upon polygamy?

432 What other fact may be considered as intimating our Creator's will upon this subject?

433 What injury to society is produced by polygamy?

434 What injurious effects upon individuals is occasioned by it?

435 Was polygamy prohibited by the Mosaic law?

436 Why was it not prohibited in the Christian code?

\* This equality is not exact. The number of male infants exceeds that of females in the proportion of nineteen to eighteen, or thereabouts; which excess provides for the greater consumption of males by war, seafaring, and other dangerous or unhealthy occupations.

† Deut. xvii. 17; xxi. 15.

As polygamy was forbidden by the Greek and Roman laws, it is probable, that it was tolerated merely in the eastern countries, and scarcely known elsewhere. Hence its omission in the Christian code, which was promulgated in countries more immediately influenced by Roman customs. The words of Christ\* may be said to prohibit polygamy by implication. For as the guilt lies in marrying *after* putting away another, there is the same guilt in marrying *without* putting away the first. And St. Paul, when speaking of marriage, always supposes it to signify the union of one man and one woman.†

In nothing do countries differ so much as in their domestic arrangements. Polygamy, although now nearly universal in the East, is prohibited in all Christian countries. In Sweden it is visited with death. In England, and in the United States, the punishment is less severe; but as it renders void the second marriage, it is a cruel fraud, because it cheats a woman out of her chastity and happiness together.

The ancient Medes compelled a man in one canton to take seven wives, and each woman in another five husbands, according as war or other causes had thinned the male or female population respectively.

#### CHAP. III.—DIVORCE.

By divorce is meant the dissolution of marriage at the will of either party.

The power of divorce was given by law to the husband, amongst the Jews, Greeks, and Romans; and is still exercised by the Turks and Persians; [and, under certain limitations, by the wife also, in England, and elsewhere.] The question is, does the law of nature admit such a right?

As the duties which, by the law of nature, parents and children owe reciprocally to each other, cannot be fulfilled, except by the continued cohabitation of the parents; divorce, because it is at variance with such obligations, is at variance with the law of nature also.

437 Where is it prohibited, and where allowed?

438 What is the meaning of divorce?

439 Where has it been allowed?

440 What is the question to be determined?

441 In what light is it placed by the relations of parents and children?

442 Setting these relations aside, does the law of nature forbid it?

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\* Matt. xix. 9.

† Rom. vii. 1, 2, 3.

But if there be no children, the objections to divorce rest on grounds of general expediency alone ; for,

1. Divorce is not necessarily excluded by a marriage contract ; for the contract may be so worded as to permit such separation.

2. Although a contract may naturally continue as long as the purpose for which it was made continues ; still, it will be difficult to show what purpose of the contract, (the care of children excepted,) should prevent a divorce.

3. Nor can it be said that a contract for marriage is indissoluble unless the parties can be placed in the same situation as they were previous to the contract ; for this law, if applicable to divorce, must be so to all other contracts,—a proposition requiring a proof not yet given.

I confess that I am unable to assign any circumstance in the marriage contract itself, why it could not, like other mutual engagements, be dissoluble at the option of the parties. We must therefore seek elsewhere for the obligation to its forced continuance. And if it appears that it is supported on the grounds of general expediency, we cannot in principle pronounce it contrary to the law of nature ; and therefore must conclude that it ought, like other duties, to be fulfilled.

Now the general utility of making the marriage contract indissoluble during the life of either party, may be proved from its tendency to preserve the happiness of the married state, through the advantage of a perpetuated common interest. For if a separation could take place at will, the wife, because she is likely to suffer most from such separation, would endeavor to draw to herself a fund in order to guard against the evils of such anticipated divorce. This disunion of interests would be followed by an alienation of affection, which would be detrimental to both parties. But if she be secured from the chance of a capricious separation, the same self-interest, which in the former case we said would lead to acts productive of misery to both, will lead her to an opposite line of conduct, which would be productive of mutual happiness.

443 Give three reasons to show that it does not.

444 Is there any circumstance in the marriage contract to prohibit divorce ?

445 To what other principle shall we look for its settlement ?

446 How is proved the general utility of hindering divorces ?

447 How is this shown ?



Again, an indissoluble contract tends to preserve the happiness of the married state, by inducing a necessity of mutual compliance. A man and woman in love with each other do this insensibly. But where love is wanting, nothing will go half so far with the generality of people as this one intelligible reflection, that they must each make the best of their bargain. Therefore, through necessity they will promote the pleasure of each other; and this will soon become a habit so easy and natural, that it will procure for them a repose and satisfaction sufficient for their happiness. Besides, as by the constitution of nature, love is not a durable passion, whatever attractions either party may have once seen in the other, will be impaired by possession. And, as the desire of novelty can be checked only by the known impossibility of obtaining the object, that check in this case should be adopted for its utility; because it supplies to both sides, by a sense of obligation and mutual interest, what satiety has impaired of passion and of personal attachment.

Were the motives which bring the sexes together able to hold them so; or could the woman, after a separation, be restored entirely to her former state; the power of divorce, if granted, would not be used, or could not be abused. But as, in the present constitution of society, the disadvantage must be generally on the woman's side, justice demands that some check be interposed, to prevent one half of married persons being made miserable by the caprice of the other.

But it may be said, that divorces by mutual consent would not be exposed to the same evils; but we must consider the indelicate situation, and the prospect of misery, to which the dissenting party must be exposed, if the other has a right to ask for her agreement to such a plan.

The law of nature (or of the land, rather) admits a divorce as a remedy for some provable acts; but not as a relief from imaginary grievances, such as dislike, temper, jealousy, and other sources of annoyance; because such objections may

448 What other proof is there? How is it shown?

449 What other useful check does it occasion?

450 Why is that check necessary?

451 What circumstances would do away the abuse of divorce?

452 In the present constitution of society, what is demanded by justice?

453 What reply is there against divorce by mutual consent?

454 When does the law of nature admit of divorce? When does it not? Why?



always be asserted by one party, and cannot be disproved by the other ; and the admission of them, as a plea for divorce, would destroy at once the marriage contract.

This consideration of the extent of the mischief which would result from a latitude in the power to divorce, is the best answer to those persons who, like Milton, advocate the right to dissolve a marriage on the ground of mutual dislike. For, if it be said that the happiness of both would be best consulted by the dissolution of a connection disagreeable to both ; it may be replied, that as the extension of the rule would produce more misery than its limitation can, the general consequence must not be sacrificed for the benefit of the individual exception.

Although the Mosaic law permitted a Jew to put away his wife for slight causes, Christ has prohibited all divorces, except on the ground of adultery ;\* a rule which, as it is given in explicit words, must be taken in its plain sense.

With regard to any separation short of divorce, neither law nor reason forbid it ; for if there be no children to require the care of both parents, the parties are left to seek their own happiness by any act that is not immoral. Because, the promise ‘to keep together’ (i. e. to live together) is both given and received, with the knowledge that a case of separation, or even of divorce, may occur, through the operation of the very law that imposed the oath. And St. Paul, who, while he permits a wife to depart from her husband,† orders her also to remain unmarried, thus distinguishes between a separation and divorce.

[“In some of the States, absolute divorce is confined to the single case of adultery ; but in the residue of the States, intolerable ill-usage, or wilful desertion, or unheard-of absence, or some of them, will authorize a decree for a divorce.”—*Kent’s Commentaries*, Lec. 27.]

Those canonical disabilities which release parties from the

455 What reply may be given to Milton, and those who think like him ? Why ?

456 What is the Scripture law upon this subject ?

457 Can there be any other kind of separation ?

458 Is there any Scripture authority for this ?

459 What is the law of the States upon this subject ?

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\* Matt. xix. 9.

† 1 Cor. vii. 10 11.

marriage contract on the ground of some legal defect, are not dissolutions of an existing marriage, but simply declarations that there was in fact no marriage, in consequence of impediments then subsisting: for as the parties are charged to make known such impediments, the contract is supposed to take effect only on the supposition that no such impediments exist; and it is consequently dissolved when they become known.

#### CHAP. IV.—MARRIAGE.

In almost all countries marriage is made a religious ceremony. Yet in its own nature, and apart from *scriptural* rules and regulations, it is a civil contract merely. And even where the Jewish and Christian Scriptures have been appealed to as guides in legislation, marriage was not ordained to be celebrated as a religious rite in churches till the thirteenth century after Christ.

Formerly, the husband bought his wife from her family; at present, the wife frequently buys the husband; and by such alteration in fashion, she has obtained what she previously wanted, the chance of that continued attention which her personal attractions could not always secure.

Marriage is a contract on the part of the husband to love, comfort, honor, and keep his wife; and on that of the wife, to obey, serve, love, honor, and keep her husband, in every change of bodily health and worldly wealth; and both engage to keep only to one another during their joint lives.

[“It is not necessary, by the *common law*, that a clergyman should be present, to give validity to the marriage, though it is, doubtless, a very becoming practice, and suitable to the solemnity of the occasion. The consent of the parties may be declared before a magistrate, or simply before witnesses, or subsequently confessed or acknowledged; or the marriage may even be inferred from their reputation as hus-

460 What effect has canonical disabilities? Why?

461 How has the marriage ceremony been generally esteemed?

462 Is it so naturally?

463 How long has it been considered a religious rite?

464 What are the terms of the contract on the part of the husband?

465 What are the terms on the part of the wife?

466 For how long is their engagement?

467 What are the *common-law* regulations concerning the contract?

band and wife. In several of the United States the common law remains in force, but in some others there are statute provisions on the subject.”—*Kent’s Commentaries*, Lec. 26.]

The peculiar feature in this contract is, that while the other obligations are similar, that of obedience is promised on the part of the wife alone. But, however contrary such a stipulation may appear to the natural rights of the sexes, whom God has made equal in their respective stations, it is practically of great utility, because it prevents a contest for superiority. Besides, the wife’s obedience is peremptorily enjoined by the Christian Scriptures;\* so much so, that it seems to extend to all acts except those which are in themselves criminal.

Although we cannot say that no one can conscientiously marry, who does not prefer the espoused to all other men or women in the world; yet it is plain that whoever is conscious that he dislikes the woman he is about to marry, or that he will not probably entertain a proper affection for her, is guilty, when he pronounces the marriage vow, of a deliberate prevarication. The same likewise of the woman.

The marriage vow is violated by any unnecessary conduct of one party which knowingly produces unhappiness in the other.

[“No persons are capable of binding themselves in marriage, until they have arrived at the age of consent, which, by the common law of the land, is fixed at fourteen in males, and twelve in females. Nature has not fixed any precise period, and municipal laws must operate by fixed and reasonable rules.”—*Kent’s Commentaries*, Lec. 26.]

468 Are these regulations adopted in all the States?

469 What is the peculiar feature of the marriage contract?

470 Why is this peculiarity useful?

471 Is there any other reason for it?

472 To what extent is the scriptural injunction?

473 When would a man be guilty of prevarication in this business?

474 When is the marriage vow violated?

475 To what age must the contracting parties have arrived?

476 Why has this regulation been made?

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\* Eph. v. 24. 1 Pet. iii. 1—4.

## CHAP. V.—DUTY OF PARENTS.

That virtue which confines its exercise within the circle of a man's own family, is, it is said, only selfishness refined. And yet, it may be asked, Is not virtue the most valuable where it produces the most good? and where can the most good be done so effectually as in our own circle? Besides, while the happiness of each individual part is thus upheld, is not the happiness of the whole increased?

If, then, such a virtue be lightly esteemed, it must owe its inferior estimation to a view, not of its effects, but of its motives. Nor can it be denied that it is possible so to unite our children's interest with our own, as that we can often pursue both from the same motive. Where this is the case, the above charge of selfishness will be borne out; especially if it can be shown that in the prosecution of such objects of common interests, important duties of another kind have been neglected.

As regards the attention due to children, the act is indispensable; but its motive is not often meritorious. Hence, though the attention to such duties does not raise a man in the scale of virtue, a neglect of them justly sinks him deep in disgrace; because it exhibits his want, not only of parental affections, but also of moral principles to supply the place of them.

Another reason why we do not esteem this duty any higher, is because virtue is prized, not when it produces more good, but when the most wanted; and in this case, there is no necessity for such a principle, because it is supplied by instinct. Yet, as the instinct may be checked or diverted by the wants of the parent himself, a sense of obligation is sometimes necessary to stimulate him to duty. And even where there would be the full exercise of parental affection, a principle of duty may still be wanted to direct its

477 What have some thought of the virtue which affects merely our own family?

478 Should that kind of virtue be despised?

479 Why, then, has it been lightly esteemed?

480 What is said of the act of attention to one's children? What of the motive?

481 What follows from this view of the subject?

482 What acts of virtue do we most prize?

483 Is the sense of obligation to this duty ever necessary?



exertions so as to benefit rather than to injure his children. Universally, wherever a parent's conduct is directed by a sense of duty, there is so much virtue.

Some moralists tell us, that parents are bound to do all they can for their children: but, at this rate, every expense which might have been spared, or every profit omitted which might have been made, would be criminal.

The duty of parents has, like other duties, its limits; and its rules may be classed under the heads of maintenance, education, and a reasonable provision for the child's future welfare.

I. Maintenance. The wants of children demand a maintenance from some person; and as none have a right to burden others with the consequences of their own acts, parents alone are bound to that maintenance. Besides, the provision prepared by nature in the mother, for the nourishment of the child, and also the instinct of affection on the part of the parents, indicates the intention of God as to binding the parties to maintain their offspring.

Hence is seen the guilt of those, who, when alive, desert their children, or, previous to their death, neglect to lay up such provision for their support as they might have done by frugality, diligence, and a sacrifice of selfish enjoyments.

Little as the Christian Scriptures concern themselves with maxims of a worldly-minded nature, yet on this point they are very explicit. "If any provide not for his own, especially those of his own household, he hath denied the faith, and is worse than an infidel."\*

II. Education. By this word is intended the preparation made in youth for the child's future life.

Education is necessary to check habits of vice and to cherish those of virtue; and without occupation, one result of education, a youth falls into mischief from mere idleness. For as in civilized society every thing is the effect of art, the

484 What extravagant opinions are held by some moralists?

485 What classification may be given to the duties of parents?

486 Why are parents bound to maintain their children?

487 Who are shown by this fact to be guilty?

488 What notice of the obligation is taken by the Scriptures?

489 What is meant by education? Why is it necessary?

490 What fault is nearly allied to the nonperformance of this duty:

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\* 1 Tim. v. 8.



child who is not taught some art, is of necessity useless, and consequently almost always mischievous; and therefore is little less injurious than a mad dog or a wild beast.

Next to the evils of not educating, is the giving to youth a lazy and precarious calling, which unfits them for situations requiring personal restraint or continued mental exertion, and induces the habit of resorting to temporary expedients for support, instead of seeking permanent occupation.

In lower life, parents fulfil their duty by educating their children to an honest handicraft calling; but in the middle orders of society, children should either be prepared for a higher profession; or both furnished with the means of living without one,\* and instructed in such liberal arts as will prevent them from becoming useless or mischievous members of society.

III. A reasonable provision for the child's welfare will be made by furnishing him,—1. With a situation suited to his fair expectations; 2. With the means of supporting such a situation; and, 3. With a probable security for his moral conduct.

The situation suited to the fair expectations of a child is one somewhat approaching that of his parents; or similar to that provided by other parents of like condition for their children. On the other hand, it is equally fatal to the future happiness of children to educate them either above or below their fair expectations; for in the one case, their hopes are directed to objects not attainable; and in the other, their ideas being ill adapted to a change of fortune for the better, prevent their rational enjoyment of any good that may be thrown in their way.†

491 What duties devolve upon parents in the lower classes?

492 What, upon parents in middle life?

493 What three things are necessary for the child's future welfare?

494 With what kind of a situation should he be furnished?

495 What will probably befall those children who are educated above their expectations?

496 What, if educated below their expectations?

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\* Amongst the Athenians, if the parent did not put his child into a way of getting a livelihood, the child was not bound to make provision for the parent when old and necessitous.

† Although the education must vary with the means of the parents, yet in all cases the health and virtue of the child must be the first consideration. In respect of health, all out-door occupations are preferable

But in thus indulging the reasonable expectations of the child, care must be taken that no sacrifice be made of what is due to exigences ; such as appearance and mode of living, commonly called *decency*. Of such exigences custom can best define the nature and limit ; and all that can be said here is, that, as custom has annexed to certain stations the enjoyment of certain pleasures, a young person who is withheld from sharing in them by a want of fortune, can scarcely be said to have a fair chance of happiness. Hence, in the disposition of property at death, care should be taken to provide means to meet such exigences, to be regulated by a correct view of the different situations for which the children have been fitted, and the various success they have met or are likely to meet with.

From the few lucrative employments left to females of small means, daughters deserve the particular care of the parent ; and, as with diminished means, the chance of their marriage decreases, they have a right to expect a provision in their favor, even if it should occasion a decrease of the fortunes of the sons.

But when these exigences have been provided for, the parent ought to satisfy such expectations of his children as arise from the custom of the country.

When a provision for the exigences of a child has been made, the parent is at liberty to punish its previous improper conduct by any diminution of property ; for a bad child has no reason to expect, and hence no right to receive, the same kindness from his father that a good one has.

497 What care is necessary in the disposal of property at death ?

498 What care for daughters is recommended ?

499 What should follow after provision for exigences ?

500 What liberty has a parent after providing for the exigences of his child ?

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to in-door ; and active, to sedentary employments. In respect of virtue, all dealings where the benefit to both parties is reciprocal, are preferable to those where one man's gain is another's loss ; as gambling, speculations in the funds, or in goods. Trades, also, where the profits are dependent on our exertions, are better than fixed salaries, equal in amount to the profits ; for, in the former case, there is generally a pleasing mental activity, which is wanting in the listlessness or sameness of the occupation affixed to the latter. In respect of security, trades connected with the manual arts are better than those connected with merchandise ; and situations which admit of early marriages are preferable to those that require a longer time for a larger establishment.

The only case where a parent is justified in disinheriting a son, (and that not entirely,) is when the conduct of the son is such as to give the father reason to believe that if the son possessed property, he would waste it, as little controlled by reason, as if he were a perfect idiot. But even here, means ought to be provided for his support, in the shape of an annuity arising from property which he cannot alienate.

In the distribution of property it has been said, that a parent has a right to do what he will with his own. This expression is true, if, by right, be meant a *legal* right; but he possesses no *moral* right to disappoint the fair expectations of his children by any feelings of caprice alone; for, if all conduct themselves equally well, all ought to be equally dear to him, though all may not equally possess the same power to gain his good graces, by playing on the weakness of his nature. To meet these future demands on his fortune, a parent is bound to regulate his present means with frugality; and to be just before he is generous. But though the plea that charity begins at home is good, up to the point where reason says, that to give to those who want, by taking from those who also want, is not adding to the stock of public happiness; the same plea cannot be urged to justify parsimony, where a sufficiency has been already obtained. For, beyond that point, as the use of wealth decreases, so ought the desire of it to diminish, even on the children's own account; whose chance of well-doing, so far from being increased, is lessened by such access of fortune. Of those who have died rich, few have begun with much; and, in respect of enjoyment, self-love throws a charm about wealth gained by one's own exertions, that is wanting in property merely inherited from another.

The last and most important duty of a parent is to secure the moral conduct of his child. The parent who believes that man is an accountable being, and observes that the acts of manhood are, to a certain degree, the results of youthful instruction, will feel himself bound to attend equally to a

501 When may a parent disinherit a child?

502 What amends should be made in such cases?

503 What is said of the expression "One may do what he will with his own?" Why?

504 How should this affect a parent's expenses?

505 When will this cease to justify parsimony? Why?

506 What is the most important duty of a parent? Remarks.

child's moral conduct and worldly welfare ; since the child's interest is concerned in the one means of happiness as well as in the other ; and both means are equally and almost exclusively in the parent's power.

To attain this object, the most effectual step is to inculcate the doctrine of a future state of rewards and punishments ; and the doctrine will be inculcated most successfully by the parent's visibly acting with a view to these consequences themselves. Solemn exhortations, at variance with acts, will produce either no effect, or a mischievous one ; while reproofs and chidings, prompted by sudden provocation, discover more of anger than principle, and tend to create an aversion rather to the person forbidding, than to the thing forbidden.

Next to being virtuous, the parent should endeavor to make his virtue appear amiable ; and thus induce a child to receive what would be loathed if presented in a repulsive form. For as youth are equally violent in their likings and dislikings, there is reason to fear that parsimony or piety, for instance, if insisted on too strongly, will be rejected as inconsistent with the rational enjoyment of money and mirth ; and their place will be supplied by the opposite feelings of profusion and irreligion.

Independent of the parent's own conduct, as forming a model for the child's imitation, attention should be paid to the peculiarities of the youth's disposition ; which may be improved by placing him where motives will present themselves of self-correction, rather than of self-indulgence.

Instead, therefore, of placing penurious tempers in trade, dissolute youths in the army, and crafty lads in the law, a parent ought to choose situations quite the reverse. And as education should give rather what the youth does not possess than what he does, I would choose a public or private education, according to the tendency of the pupil's character.

It appears, that at public schools more literature and more vice is acquired, quick parts more cultivated, and slow ones more neglected ; while, under private tuition, though less

507 What is the best means for this ?

508 How should this be done ? Give illustrations.

509 With what other management should good example be attended ?

510 What attention should be given to the dispositions of children ?  
Give examples.

511 How should our choice be affected concerning public or private education ?



learning be attained, it is attained with more certainty ; and, therefore, the timid and indolent should be sent to the former, while the spirited and passionate should be restrained by the latter.

#### CHAP. VI.—RIGHTS OF PARENTS.

The rights of parents result from their duties. If the parent is bound to attend to the welfare of his children, he has a right to demand their obedience to so much of his authority as may be requisite for the discharge of his sacred trust. But as the duties of the parent are the sole foundation of his right, so his power cannot naturally extend beyond the exercise of such duties.

Hence it follows that parents have not a right in the persons of their children, and cannot sell them, as they were allowed by the Roman law. Upon this, by the way, we may observe, that the children of slaves are not, by the law of nature, born slaves ; for the masters can only possess what the slave has a right to part with, his own personal freedom.

Nor can a parent, by virtue of his authority, require his children to do an immoral act ; nor even may he, for gratifying his own personal feelings, lead them into any act by which their happiness would be sacrificed. For as the authority is given with a view to increase, and not diminish the child's happiness, its exercise must be confined to the attainment of the former object alone.

But as provision must be made sometimes for the future welfare of children before they can judge for themselves ; parents have a right to choose situations or professions for them.

In questions of disputed authority between the parents, as the wife herself must obey the husband, so must the child obey rather the father's than the mother's commands.

As the rights of the father result from his duties, it is immaterial whether the father performs personally such duties, or

512 From what do the rights of parents result ? Illustrate.

513 What do we learn from this ?

514 What is said of children of slaves ? Why ?

515 What acts has a parent no right to command ? Why ?

516 When has he right to choose professions for his children ?

517 Suppose one parent command one thing, and the other parent  
ts opposite ?

518 What are the rights of a guardian or tutor ? Why ?



delegates them to another. Hence, a guardian or tutor has the same rights as the father has to the child's obedience.

#### CHAPTER VII.—DUTY OF CHILDREN.

I. Until children have some notion of the difference of moral acts, they can have no duties ; but this excuse cannot be valid during the interval between the dawn and maturity of reason. And that is the time when it is necessary that they should be subjected to many restraints, and directed in the employment of their faculties, though such necessity may not be apparent to themselves. For this cause, their submission during this period must be ready and implicit, unless they are commanded to do a criminal act.

II. As long as grown-up children remain voluntarily members of the father's family, they are bound, besides the general duty of gratitude to their parents, to conduct themselves as they would towards any other person into whose family they might be admitted ; and not presume, on the strength of relationship, to be free from the regulations of the family, or from aid in its support.

III. After the children have left the father's family, the gratitude due to a parent differs only in *degree* from that due to any other benefactor ; and is the greater, in that respect, only as the kindness received from the hands of the parent is greater than what is received from any one else.

With regard to the innumerable acts by which filial gratitude may be shown, it is sufficient to observe, that declining years demand a continued exertion on the part of children, to promote the enjoyments and soften the anxieties of aged parents ; and, therefore, however irksome such a duty may seem to younger persons, it ought to be cheerfully performed, from the consideration that the infirmities of age can hope

519 When are children without duties ?

520 When can there not be this plea ?

521 What is said of that time of life ?

522 What follows from this ?

523 Supposing grown-up sons and daughters remain in their father's family.

524 What duties have children after they have grown up to manhood, and have left their father's house ?

525 By what acts may children show their gratitude ?

to find no indulgence except in the piety and partiality of children.

Since the chief points of difference between parents and children relate to marriage, or to the choice of a profession, it is necessary to define the respective duties of the parties.

A parent is bound to increase the happiness of his child. Hence, if it be the case that there is such an exclusive attachment between individuals of different sexes, that their union is necessary for their happiness; or if a child has an unconquerable aversion to a particular profession; the parent ought not to urge his authority against the will of the child, and the child is not bound to obey it. Nor is the parent justifiable in holding out any threats of present or future displeasure for a non-compliance with his caprice. All that he can fairly do, is to represent correctly his view of the step to be taken, and to require of the child to give himself such time for reflection as will enable him to see whether his present feelings are of a permanent nature or not; and should the result of such reflection be only a confirmation of the child's previous resolution, the parent is bound to yield. And on the other hand, the child is bound to act fairly with his parent; and to try faithfully whether time and reflection will not destroy his previous predilection; and not enter upon the experiment with the design of obtaining his end at last, by means of a temporary compliance.

A parent has no right to urge his child upon a marriage to which he is averse. This case differs from the other only in the intensity of the suffering, because it is easier to live without a person that we love than with one whom we hate. Add to this, such compulsion leads to prevarication in the promise of affection; and all authority ceases, when obedience becomes criminal.

In all contests between parents and children, the parent should represent to the child the consequences of his con-

526 What are the most serious contentions between parents and children?

527 What is the duty of each party in case of exclusive attachment, on the part of the child, to a particular person; and of an aversion to a particular profession?

528 What should, and what should not a parent do in such cases?

529 And to what acts is the child bound?

530 May a parent urge his child to an unwilling marriage?

531 What may a parent do in such cases?

duct. And this should be done with fidelity, and not with exaggeration, as is usual with some parents, who defeat their own end by losing all credit with their children. If the child be competent to judge for itself, the parent's right to interference ceases with the necessity for its use. Hence, for instance, if a secret is confided to a child, the parent has no right to demand the disclosure of it. Neither can he require the violation of any trust reposed in him; for as the son was expected to pursue his own judgment, so is he bound to do so, without the interference of the parent in any way.

The duty of children to their parents, as ordained in the decalogue, is confirmed directly by Christ in many parts of the gospel. And it is recognised indirectly by his reproof of the casuistry of the Jews, who attempted to evade the positive duty of supporting their indigent parents, by pretending to devote to the service of God the sum which the parents were entitled to demand.

By the Jewish law, disobedience to parents was an offence which the magistrate could punish with death.\* And under the Christian dispensation, St. Paul enjoins children to be obedient to their parents, because "it is right,"† or "well-pleasing unto the Lord."‡

532 Has a parent any right to interfere where a trust has been reposed in his child? Why?

533 Is a child bound to support his indigent parents?

534 How did the Jews punish disobedience to parents?

535 What is the New Testament injunction upon the subject?

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\* Deut. xxi. 18.

† Eph. vi. 1.

‡ Col. iii. 20.

## BOOK IV.

## DUTIES TO OURSELVES.

STRICTLY speaking, there are few duties or crimes which begin and end with a man's self. We have reserved, however, to this head,—1. The rights of self-defence; 2. The crime of drunkenness; and, 3. The crime of suicide.

## CHAP. I.—RIGHTS OF SELF-DEFENCE.

It has been said, that in a state of nature, a man may defend a perfect right, however trifling, at any cost. But this is doubtful: because, 1. No general rule is worth sustaining at such an expense; and, 2. It cannot tend to general happiness, that one man should lose a limb or his life, merely that another may save a little property. Still, as a perfect right depends on its value alone, and as it is impossible to ascertain when the value will justify the extremity of violence in its defence; the person attacked must decide, as he best may, between the general consequence of yielding, and the particular effect of resistance.

But in civil society this right is, at all events, suspended. For there, either the property is protected against attacks, or, if it is destroyed, the law is at hand to grant reparation; and as, in either case, the party receives the assistance of the law, so is he bound to receive from that alone, the kind, as well as the measure, of the satisfaction he is to obtain.

But if, instead of property, life be endangered, every defence, even to the destruction of the assailant, is justifiable. For it cannot be shown that a man is bound by the law of nature to prefer another person's life to his own; a maxim which even the expression of "love thy neighbor as thyself,"

- 1 Do many duties and crimes belong exclusively to one's self?
- 2 What part of morals may, however, be classed under the head of duties to ourselves?
- 3 What has been the opinion of some on the defence of our rights?
- 4 Is there any doubt of this? Why?
- 5 How is this extremity of right suspended in civil society?
- 6 Is there any doubt of our having a right to defend our lives?
- 7 Why may we proceed to extremities in this case?

does not require. And our living in civil society does not alter the case ; for the law, by the supposition, does not grant protection ; and it surely cannot make us reparation. The rule is of course restrained to extreme cases ; and when, after all other means of escape having been ineffectually tried, the question is at last whether ourselves or the other party must perish. This rule holds, whether the danger proceeds from an enemy, or from a maniac, or even from a drowning person dragging us after him into the water.

The case which, next to the defence of life, would justify acts of extremity, is the defence of chastity ; for there the law can make no reparation. With the exception of these two cases, homicide is unjustifiable, unless when authorized by the law. A man may take upon himself the execution of the law, 1. To prevent the commission of a crime against himself, which, if committed, would be punishable with death ; and, 2. To put down riots or similar acts of hostility to the government. But as, in both cases, the individual is merely an agent of the law, he is bound by the rules of the law ; and, consequently, though he may kill a housebreaker at night, he must not do so in the day-time ;\* nor can he fire on a mob till the riot act has first been read.

#### CHAP. II.—DRUNKENNESS.

By drunkenness is here meant habitual intemperance ; although the guilt and danger is applicable in a certain degree to each specific act of intoxication, because habit is only a repetition of single instances.

The guilt of drunkenness is to be estimated from the tendency of its mischievous effects. 1. It leads to acts or words

- 8 Does living in civil society affect this right ? Why ?
- 9 In what cases only may we exercise this liberty ?
- 10 To what other circumstances is this rule applicable ?
- 11 What other defence may be pursued to the same extremity ?
- 12 In all other cases how must we consider the taking of life ?
- 13 When is homicide justifiable by the law ?
- 14 In our inquiries, what shall we mean by drunkenness ?
- 15 In doing this, shall we say that any specific act of intemperance is not blameable ? Why ?
- 16 Repeat the six mischievous effects of intemperance.

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\* This distinction, by a remarkable consent of legislation, is found in the laws of Judea, Greece, and Rome.



of anger or lewdness : 2. It disqualifies men for the performance of the duties of their station : 3. It leads to extravagance : 4. It produces unhappiness to the drunkard's family : 5. It shortens life : and, lastly, it corrupts by example.

But it may be said that the age and temperature of one drunkard may leave little to fear from the inflammation of anger or lust ; that the fortune of a second may not be injured by the expense ; a third may have no family ; and the constitution of a fourth may even defy the effects of drinking. Still, drunkenness is a social vice, and if an effect be produced by the drunkard's example, which would not be produced without it, his guilt is to be estimated by the mischievous effect of that example operating on persons who are less able, either from their means or constitution, to guard themselves against those evils from which he himself may be secure.

Drunkenness is repeatedly forbidden by St. Paul,\* as inconsistent with the Christian profession.

It has been asked, how far is a drunken man responsible for his acts ?

The answer is, if the man be so drunk as to lose all consciousness, his guilt, as regards the mischief done, is no more than that of an insane man. He is, however, chargeable with the guilt of wilfully getting drunk ; and as the unintentional mischief was the result of the wilful drunkenness, or at least of drunkenness not wilfully avoided, the guilt of the drunkard is to be measured by the probability that such mischief would be the result of his drunkenness. Hence, the guilt of a drunken man's act of mischief, bears the same proportion to that of a sober man's similar act, that the probability of such act's being the result of drunkenness bears to absolute certainty. All acts, which are the *certain* effects of drunkenness, attach nearly the same guilt when done by an intoxicated man, as when done by a man in his sober senses.

17 What expostulations may be used against our condemning drunkenness on account of these effects ?

18 What answer may be given to such remarks ?

19 Is drunkenness forbidden in the Scriptures ?

20 What is an important question on this subject ?

21 Has the drunkard any guilt as it regards the mischief itself ?

22 Has he any guilt at all ? How is it measured ?

23 What results from this rule ?

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\* Rom. xiii. 13. 1 Cor. vi. 9, 10. Eph. v. 18 1 Thess. v. 7, 8.

If consciousness be only partially lost, the guilt of the drunken man is of a mixed nature.

But as the ideas relating to proportional quantities are easier understood by adopting the language of arithmetic, let us suppose the guilt of a sober man while in a state of perfect consciousness, is the *whole* guilt. Then the guilt of the drunken man, who retains only half his consciousness, will be *one half* of the whole guilt. And then if it was known beforehand that the probability of the mischief was one half of the certainty, the guilt of getting drunk will be *one half of the remainder*; so that, altogether, he is responsible in *three-fourths* of the whole guilt.

As of all habits, drunkenness is the most insidious in its progress, and becomes most powerful by indulgence; it requires less prudence to resist it at first, than it does firmness to overcome it at last. The victory may, nevertheless, be gained by resolute efforts. And as inebriety is a social vice, and recurs chiefly at those intervals of time in which the man given to drink is likely to meet with boon companions; one method of overcoming the habit, is to change place, situation, company, or profession. For, sometimes, when the motive for intemperance ceases, the act itself will cease also. Or, if the habit result from a desire to banish sorrow, the same remedies will be found equally efficacious, especially if backed by the resolution to abstain entirely from an indulgence, which only increases the evils it pretends to cure. Such a rule is very often salutary. For, *indefinite* rules of abstemiousness are apt to yield to *extraordinary* occasions; and such occasions are perpetually occurring. And if the rule be strict, the act of abstinence will be a less trial than that of breaking the rule: besides, if the rule to abstain be known to acquaintances, we are not exposed to their importunity to break it.

There is a difference, no doubt, between convivial intemperance and solitary sottishness; but as the former generally leads eventually to the latter, the difference is rather in degree than in kind.

24 Suppose the drunkard loses his reason but partially?

25 Explain this in arithmetical language.

26 When is it easiest to avoid drunkenness? Why?

27 May it be overcome afterwards? How?

28 What resolution would be of service in such cases?

29 Give a reason for this.

## CHAP. III.—SUICIDE.

May not any man, if he pleases, take away his own life without guilt? Certainly not, if the guilt of an act is to be measured by its general consequences. We know that particular cases of suicide may arise, in which it is difficult to point out the *individual* mischief. But the same may be said of murder; yet, as murder is not therefore excused, so neither can suicide be considered innocent on that ground alone.

But if a man's life be useless to himself and to society, has he not a right to take away what is thus useless to all? We reply, that no man, be his state ever so wretched to himself, is useless to society. Besides, the latitude of the rule is a proof of its inherent impropriety. For suppose it were lawful for one person to kill another when he should judge that the life of the latter was useless; would not a law of such latitude warrant indiscriminate murder, and thus show its inherent iniquity? Now, as a similar rule on the subject of suicide would admit of equal extension, it is evident that the same impropriety would be attached to it.

But may not a man commit suicide, when, of those whom he leaves behind, not one will lament for his death? It is evident, that if a man regulates his determination by this rule, his inquiry will be, not whether any will sorrow, but whether their sorrow will exceed that which he would suffer by continuing to live. This would lead to a comparison, concerning which the judgment will differ in a great degree according to the state of the spirits. Hence, the rule would become to men of hypochondriacal constitutions an unqualified license to commit suicide, whenever their real or imaginary distresses would outweigh the dread of the pains of death. The absurdity of the rule is more apparent when we consider that it is for the use of those who are under the oppression of some grievous uneasiness. And what effect can we look for from a rule which proposes to weigh our own

- 30 Can we discover the individual mischief of every case of suicide?
- 31 Will this excuse it?
- 32 What is the first question and answer?
- 33 What defect is observable in such a rule?
- 34 What is the second question?
- 35 What will be the inquiry of a man acting by this rule?
- 36 What would be the effect of this?
- 37 What else renders the rule more absurd?

experienced misery against the apprehended pain of another ; and that in so corrupt a balance as the party's own distempered imagination ?

In like maner, every reason that can be assigned to justify an individual act of suicide, will bring us to an indiscriminate toleration of it ; and is therefore objectionable on the ground of the general consequences which result from the permission of a single act. These are, 1. The loss of many lives, that might be useful ; 2. The affliction of many families, and the consternation of all, who could no longer rest secure in the motives of religion and morality against their friends' committing an act to which there are many excitements. There is also another consideration against suicide ; and that is, by continuing in the world, and by exercising those virtues which remain within our power, we retain the opportunity of meliorating our condition in a future state. This last reason, it is true, does not prove suicide to be a crime ; but it holds out a motive to dissuade us from it, which is the next step to proving its actual guilt ; [for if it were not wrong, no such dissuasion would be necessary.]

The preceding considerations apply to suicide in general. Besides, each case will be aggravated by circumstances peculiar to itself, from the duties deserted, and the claims defrauded ; from the misery direct or indirect inflicted on friends, and the reproach thrown on our calling ; together with the suspicion raised against the sincerity and efficacy of our religious and moral feelings.

The common topics of "deserting our post," and "rushing uncalled into the presence of our Maker," are omitted ; not because they are common, for that would be rather a proof of their truth, but because they are easily answered.

The question has been hitherto treated as one of natural religion, backed, however, with the belief in the existence of a future state ; a consideration indispensable in all reasonings on morality. As regards revealed religion, the question of suicide is nowhere directly touched on, nor can the prohibi-

38 To what will all rules bring us ? What follows from this ?

39 What are the two evil consequences of its general toleration ?

40 What is another objection against an individual act of suicide ?

41 Does this prove it to be a crime ?

42 What aggravations may attend each case of suicide ?

43 In what manner have we treated the subject so far ?

44 Do we find it expressly treated of in Scripture ?



tion against murder be applied to it. Sufficient has nevertheless been left us in the Scriptures to enable us to draw strong presumptions against the act. For instance, such expressions as, "Let us run with patience the race that is set before us," and "Ye have need of patience, that, after ye have done the will of God, ye may receive the promise," speak so plainly the necessity of submission to suffering, as to leave no doubt that the disciples of Christ are not at liberty to avoid such sufferings by self-destruction. For if such license had been intended, it is reasonable to suppose that, instead of considering the chastening of the Lord as intimations of his love, some hint would have been given of the virtue of seeking, in voluntary death, a relief from the persecution of men.

This view of the presumed intentions of the Christian Scriptures is supported by the conduct of the apostles themselves. Persuaded of the existence of a future state, and sure of enjoying its happiness, they must, while suffering every kind of misery, have looked on death as a gain. Yet not one of them endeavored to hasten that period of enjoyment by suicide; from which there is no motive that could have withheld them, so universally except an apprehension of the unlawfulness of the expedient.

Such are the arguments by which a Christian moralist may disprove directly the lawfulness of suicide; nor is it necessary to enter on reasons of a less direct kind, with the exception of one; and that, as it is more imposing than the rest, demands a more specific answer.

It has been said, then, that if a man has no right over his own life, the state can still less have a right over it: for as the state possesses only what the individual has a right to give, if the latter has no right over his own life, he has none to give to the state. Hence, the state can neither take away life for crimes, nor require the individual to expose his life in war, especially in offensive hostilities, where the right of self-defence cannot be pleaded; and still less can the prodigality of life in battle be a virtue, if its preservation be a duty.

45 Can we derive any information from them on the subject?

46 What may we infer from some of its expressions?

47 How may we support this presumed intention of these passages?

48 What part of the apostles' conduct has a bearing on this subject?

49 What important assertion has been founded on the fact that suicide is not lawful?

50 What is the argument in favor of that assertion?



To this it may be replied, that the state does not claim the right over a man's life from any tacit or actual consent of the subject to part with what is his own ; but, as I may say, immediately from the gift of God. As society finds such a power expedient for the promotion of general happiness, it presumes that God gave such a power, and intended it to be exercised ; a presumption, which alone constitutes not only this, but every other right. And, if similar reasons existed to show the expediency of suicide, its lawfulness would be at once proved from its presumed agreement with the will of God. But until it be shown that suicide can be as advantageous to the state as are capital punishments, or even a prodigal waste of life in war, there is no room for granting to a man the power to take his own life, on the ground that the state has the permission to take it.

51 What reply may be made to that argument ?

52 Why can we suppose that society has that gift ?

53 To what conclusion do we come, as it regards the aforesaid assertion ?

## BOOK V.

## DUTIES TOWARDS GOD.

## CHAP. I.—DIVISION OF THESE DUTIES.

IN one sense every duty is a duty towards God ; since it is his will alone that makes it a duty. But here, only, those duties are meant, of which God is exclusively the object.

It is certainly possible that any kind of outward worship may be less acceptable to God, than that internal devotion which silently sees and admires the Creator's wisdom and benevolence ; looks to him as the giver of all good ; and resorts to him as a present help in every trouble. Yet the former (which though excelled, is not superseded by the latter) comprises the only duties of which the moralist can take any cognizance.

Our external duties towards God consist of active worship and passive reverence. For example, on the Sabbath worship will lead us to church, and reverence will induce us to refrain from traveling.

Divine worship is made up of adoration, thanksgiving, and prayer ; the last of which, embracing in fact the two former, will form the subject of our present inquiry.

## CHAP. II.—DUTY AND EFFICACY OF PRAYER, AS SEEN BY THE LIGHT OF NATURE.

In all ages and countries, when one man desires to obtain any thing of another, he betakes himself to entreaty. Now, as what is universal must be natural, it is fair to infer that God expects at least the same entreaty from man, that man requires from his fellow-men. And a similar remark is equally applicable to thanksgiving for a favor received.

- 1 What is the ultimate object of all our duties ?
- 2 What, in particular, are called duties towards God ?
- 3 Which of these duties are treated of by the moralists ?
- 4 Does this embrace the most acceptable acts of duty ?
- 5 What are our external duties towards God ? Illustrate.
- 6 Of what is divine worship composed ?
- 7 What is by general consent the best means for obtaining a favor ?
- 8 What follows from this ?

Prayer is also necessary for preserving in the minds of mankind a sense of God's agency, and of their own dependence upon him.

But as no one can reasonably pray to a being from whom he expects to gain nothing, the duty of prayer must depend on the expectation of its efficacy. To this expectation, however, it has been objected, that, if God is all-wise and all-good, he will give us what we need without our asking; and if we ask what he knows we do not stand in need of, we cannot expect to obtain it even by our prayers. To this it may be replied, that God may, consistently with his wisdom and goodness, grant to entreaty, what, without such entreaty, might with equal wisdom and goodness be withheld. But then the objector inquires, what is the virtue of prayer that can make that favor to be consistent with wisdom, which would not have been equally so without it? Now, as in solving this doubt, consists the whole difficulty of the question, the following probabilities are offered for consideration.

1. A benefit obtained without asking, is received without gratitude; when, if it is granted to prayer, it is more apt, on that very account, to produce good effects on the one obliged.
2. God may grant to entreaty, what without entreaty would be withheld, merely with the view of keeping alive in the mind of the supplicant a sense of dependance on the Deity.
- And, 3. There will be a natural tendency in a praying person to conform to the divine will; and therefore the disuse of it would tend to the increase of moral depravity.

But, after all, whether these or any other motives may influence the Deity to grant the petition, is not the question. It is sufficient that we have shown to the supplicant that there is no *inherent* absurdity in conceiving that God will grant to prayer what he would otherwise withhold. To inquire further is not necessary for devotion, but rather inconsistent with it.

But though it is right that prayer should be offered to God, it must not be offered with the same views as when we

- 9 For what else is prayer necessary?
- 10 On what does the duty of prayer depend?
- 11 What has been supposed of this expectation by some?
- 12 How may this objection be answered?
- 13 To what other inquiry may this reply give rise?
- 14 What is the first answer to it? The second? The third?
- 15 What has been the object in using these three arguments?

address a fellow-creature; viz. to acquaint him with our wants, or to tease him by importunity, and to lead him to do either what he ought to have done before, or what he ought not to do at all.

Whatever may be the considerations which actuate the Deity to grant to a suppliant, a favor which he would withhold from another who would not ask for it, and however inscrutable or inconceivable those considerations may be to man; there is no doubt that such a difference in the conduct of God is not in the least at variance with the strict rectitude and expediency of the measure, if we allow that he may see, in the various acts and feelings of the different individuals, enough to justify such a difference in his own behavior towards them.

The objection to prayer supposes, that an all-wise Being cannot be led to change his resolution in consequence of entreaties. But if wisdom consists in effecting the most beneficial ends by the best means, it can be no part of perfect wisdom not to change, if the change produced by entreaties be itself one of those best means: we say, one of those means, though the objection rests on the supposition, that there is *only one mode* of acting *for the best*; a supposition not warranted by *our* knowledge of universal nature. Indeed, when we assert that God *must* act in a particular way, we use language that virtually denies free agency to God, by subjecting him to a necessity of abiding by only one rule.

But it is said that we have not in our experience, the proof of the efficacy here ascribed to prayer. To this, it is replied, that prayer may be efficacious, though the experience of such efficacy be obscure; and it may be added, that it is inconsistent with true goodness, to disturb too much, in answer to prayer, the order of the second causes appointed in the universe. For if the efficacy were so observable that

16 In what respects does prayer to God differ from entreaties to our fellow beings?

17 Does the Lord's answer to prayer affect his rectitude of purpose?

18 What is supposed in the objection to prayer?

19 Is the supposition correct?

20 On what other supposition does the objection rest? Is that correct?

21 What objection is asserted to be founded on our experience?

22 May appeals to our experience on this subject be relied upon?

23 Would it be proper that answers to prayers should always be observable?

it might be relied on beforehand, the consequence would be the manifest mischief of producing a careless reliance on prayers alone, instead of calling into exercise the other duties which man is required to fulfil. And all the checks to inordinate pleasure, founded at present on the dread of subsequent pain, would be destroyed, if prayer could infallibly remove the pain. Since, then, this ambiguity respecting the efficacy of prayer is necessary for the happiness of man, we have no right to ground the denial of such effects on the nonproduction of absolute proof.

Other objections to prayer are directed, not against the use of it, but an alleged abuse, in consequence of the introduction of improper subjects into forms of public and private worship. And, it has been said, that to pray for particular favors is to dictate to Divine Wisdom, and savors of presumption; and to intercede for other individuals or for nations, is to presume that their happiness depends upon our choice, and that the prosperity of communities hangs upon our interest with the Deity. But how ignorant soever we may be of the whole plan of God's moral government, the objector should know, that in such prayers, we merely ask for one man to be made the instrument of another's happiness—an event in accordance with the general course of human affairs. Why, then, may not our happiness be made to depend in some cases on the prayers of others, as it really does on their acts? As the caprice of one person can produce the misery of many, why may not the prayers of one individual operate, through the power of God, to avert a calamity from multitudes?

CHAP. III.—DUTY AND EFFICACY OF PRAYER, AS REPRESENTED IN SCRIPTURE.

The arguments hitherto adduced in favor of prayer are chiefly of a negative kind; and merely go to prove from the light of nature, that the efficacy of prayer is *not inconsistent* with the attributes of the Deity. The proof that they are actually efficacious must be obtained from the Scriptures alone; where, with the positive command to pray, we are

- 24 What would be the effect of it?
- 25 Against what methods of prayer do some object?
- 26 What is remarked upon this objection?
- 27 What do our arguments in the proceeding chapter go to prove?
- 28 Where only can we find arguments of a positive kind?



as positively informed of God's acceptance of prayer. But although without such assurances of acceptance we could have no motive to pray; yet even they do not teach us to place such dependence on prayer, as to neglect other obligations, or to expect, as evidence of the efficacy of prayer, the occurrence of events at variance with the order of human affairs.

The Scriptures not only affirm the propriety of prayer in general, but furnish also precepts or examples, which justify some topics and modes of prayer that have been thought exceptionable. The texts applicable to this subject may be arranged under the five following heads.

I. To prayer in general. "Ask, and it shall be given you; seek, and you shall find;"—"If ye, being evil, know how to give good gifts unto your children, how much more shall your Father, which is in heaven, give good things to them that ask him?"—"Watch ye, therefore, and *pray always*, that ye may be accounted worthy to escape all those things that shall come to pass, and to stand before the Son of man."—"Serving the Lord, rejoicing in hope, patient in tribulation, *continuing instant in prayer*."—"Be careful for nothing, but in every thing, *by prayer and supplication*, with thanksgiving, let your requests be made known unto God."—"I will, therefore, that men *pray every where*, lifting up holy hands, without wrath and doubting."—"Pray *without ceasing*." Matt. vii. 7. 11. Luke xxi. 36. Rom. xii. 12. Phil. iv. 6. 1 Thess. v. 17. 1 Tim. ii. 8.

II. Examples of prayer for particular favors by name. "For this thing I besought the Lord thrice that it might depart from me."—"Night and day praying exceedingly, that we *might see your face*, and perfect that which is lacking in your faith." 2 Cor. xii. 8. 1 Thess. iii. 10.

III. Directions to pray for natural or public blessings. '*Pray for the peace of Jerusalem*.'"—"Ask ye of the Lord rain in the time of the latter rain; so the Lord shall make bright clouds, and give them showers of rain, to every one grass in the field."—"I exhort, therefore, that first of all,

29 Of what extent is the Scripture encouragement upon this subject?

30 How strong is Scripture proof in favor of prayer?

31 Under what heads may the texts be arranged?

32 Mention some relative to prayer in general.

33 Mention some relative to particular favors.

34 Some for public blessings.

supplications, prayers, intercessions, and giving of thanks be made for all men, for kings, and for all that are in authority, that we may lead a quiet and peaceable life, in all godliness, and honesty, for this is good and acceptable in the sight of God our Saviour." Ps. cxxii. 6. Zech. x. 1. 1 Tim. ii. 1—3.

iv. Examples of intercession, and of exhortations to intercede for others. "And Moses besought the Lord his God, and said, Lord, why doth thy wrath wax hot against thy people? Remember Abraham, Isaac, and Israel, thy servants. And the Lord repented of the evil which he thought to do unto his people."—"Peter, therefore, was kept in prison; but prayer was made without ceasing of the church unto God *for him*."—"For God is my witness, that without ceasing *I make mention of you always in my prayers*."—"Now I beseech you, brethren, for the Lord Jesus Christ's sake, and for the love of the Spirit, that ye strive together with me, in your *prayers for me*."—"Confess your faults one to another, and *pray one for another*, that ye may be healed: the effectual fervent prayer of a righteous man availeth much." Ex. xxxii. 11. Acts xii. 5. Rom. i. 9; xv. 30. James v. 16.

v. Declarations and examples authorising the repetition of unsuccessful prayer. "And he spake a parable unto them to this end, that men ought always to pray, and not to faint."—"And he left them, and went away again, and *prayed the third time, saying the same words*."—"For this thing, I besought the Lord *thrice*, that it might depart from me." Luke xviii. 1. Matt. xxvi. 44. 2 Cor. xii. 8.

To the preceding texts of a positive nature, may be added the inference, drawn from Christ's dictation of a particular form of prayer, that such service was acceptable to God, and not without avail.

#### CHAP. IV.—PRIVATE PRAYER, FAMILY PRAYER, AND PUBLIC WORSHIP.

As each of these services has its own peculiar use, the exercise of one of them does not supersede the performance of the other two.

35 Mention some intercessions.

36 Mention some authority for repetition of unsuccessful prayer.

37 What may be added to all this?

38 How many methods of prayer do we treat of?

39 Will one supersede the performance of the other two?

I. Private prayer is necessary, as the medium of supplication for private wants, since they cannot be made the subject of public prayer.

It is useful, as tending to produce more devout feelings than prayers in public; for, when a man is withdrawn from surrounding objects, he has both leisure and inclination to ruminate on his own thoughts, words, and deeds.

It is useful, because as it leads to thought and reflection, the petitioner more fully realizes the promises and threats of the Deity, and becomes conscious of the superlative importance of providing for his own future happiness.

Lastly, private prayer is particularly recommended by the authority and example of Christ, as related in Matt. vi. 6, and xiv. 23. "When thou prayest, enter into thy closet; and when thou hast shut the door, pray to thy Father, which is in secret; and thy Father which seeth in secret shall reward thee openly."—"And when he had sent the multitudes away, he went up into a mountain apart to pray."

## II. Family prayer.

The peculiar utility of family piety consists in its influence on the domestics and younger parts of a household, who are unable to express their thoughts in private prayer, and whose attention you cannot easily command in public worship. Besides, both children and servants are wont to attribute the attendance on public worship to other and meaner motives than a sense of duty towards God; and therefore need a more forcible example of piety in the head of the family. Add to this, that as the forms and language of public worship are necessarily comprehensive, with a view to embrace the interests of many, they fail to excite that individual interest which arises from the sympathy of a domestic circle.

## III. Public worship.

If worship be a duty, public worship is necessary; be-

- 40 What is the first advantage of private prayer?
- 41 What is the next advantage? Why?
- 42 What is the next advantage?
- 43 What other circumstance is favorable to it?
- 44 What is the peculiar use of family piety?
- 45 What else seems to require it?

cause without it, the great mass of men would have no worship at all. Besides, without the establishment of religious assemblies, there would be among the common people, an ignorance of the history and tenets of their religion, and a lack of exhortation to moral conduct; which are now most effectually supplied by such assemblies; where some knowledge and memory of these subjects are imprinted on the most careless hearer, by the continual repetition of prayer and Scripture exhortation.

But it will be said, that if public worship imparts to an individual no information which he wants, and excites no feelings of devotion which private prayer or family worship does not as well supply, his attendance at such assemblies is not only useless, but even culpable, as occupying time that could be better employed.

To this it may be replied, that as the consequence of such nonattendance would be the decay of public worship generally, and of so much of the religion itself as is at present preserved by such attendance; an individual is bound to refrain from absenting himself, lest the omission, harmless in his own case, may serve as an example for similar negligence not equally harmless in the case of others. The same consideration applies to the impropriety of absence, merely on the ground of objections to certain forms and expressions adopted by the church, for it is manifestly impossible to frame a form suited to the feelings of many, which shall not fall short in some points of the ideas of perfection entertained by a few.

Independent of the direct necessity of public worship, considerable advantages are found to arise from the use of religious assemblies, through their tendency to cherish the kindest affections of our nature.

For, sprung from the same stock, fellow-travelers on the same road to eternity, dependants on the same Power, and suppliants at the same throne of mercy; with one interest to

46 Why is public worship necessary?

47 What is afforded by religious assemblies?

48 What objection may grow out of these last reasons?

49 What may be replied to this objection?

50 What other reason for absence does this reply show to be improper?

51 Are there any social advantages in attending public worship?



secure, one God to serve, and one judgment to expect; men so situated must and do feel themselves, for the time at least, members of one large family. And again, the distinctions of civil life, which for six days in the week are claimed without yielding a single point, are all forgotten on the seventh; and the natural equality of m<sup>an</sup> is then forced, by acts of joint worship, on the attention of the proudest. If ever the poor hold up their heads, it is at church; if ever the rich view them with respect, it is there; and both will be improved the oftener they meet in a place, where the great are taught humility, and the low exalted by a sense of the dignity of their nature. And thus, the frequent return of religious meetings, while it helps to smooth the rugged passions of pride and envy, produces a tone of feeling at harmony with the gradations of society, by uniting in a common bond of benevolence the two extremes of rich and poor.

The public worship of Christians is a duty of Divine appointment; "Where two or three are gathered together in my name, there am I in the midst of them." Matt. xviii. 20. And its neglect is censured by the apostle to the Hebrews, in language as applicable to the religious service of the present day as to the times of the primitive church itself. Besides, a Christian cannot think himself at liberty to reject a practice which is coeval with the institution of his creed, and adopted by every sect into which Christianity has been divided.

#### CHAP. V.—FORMS OF PRAYER IN PUBLIC WORSHIP.

As liturgies, or fixed forms of prayer, are neither enjoined nor forbidden in Scripture, they must rest their admission or rejection on the principle of expediency.

The advantages of a liturgy are—1. That it prevents the opprobrium thrown on religion by those absurd, extravagant, or impious addresses to God, which are very likely to be introduced by the folly or enthusiasm of some few, among an order of men so numerous as the sacerdotal. 2. That it

52 What are they?

53 Is public worship a duty of divine appointment?

54 What is the only reason for admitting or rejecting forms of prayer?

55 What is the first advantage of a liturgy?

56 What is the second?



prevents the distraction attendant on extemporary prayer; for as the congregation do not know the petition till they hear it, they know not, till heard, whether they can join in it; and while the ear and the mind are thus both directed to the matter of the prayer, the devotion of the hearer is suspended till the conclusion of each sentence. And besides, before he can make the same request in his own heart for himself, the attention is called off to what succeeds; and the expectation of the novelty with which he is gratified interferes with the proper business of the time and place. Hence, such a congregation, while listening to the prayers of a favorite minister, seem more like the audience of a favorite actor than as actors themselves in any exercise of devotion. Besides, as the very object of the religious assembly is to join in prayer, such object cannot be attained by leaving to one person to conceive and deliver a prayer, in which the congregation, being ignorant of the subject matter, cannot possibly join.

On the other hand, the disadvantages of a liturgy are—

1. That forms of prayer composed for one age become, from the unavoidable change of language, unfit for another; and,
2. That the repetition of the same words produces weariness and inattention in the congregation. But these objections are, after all, unimportant, since the first can be overcome by occasional revisions of the language, and the second by the exercise of greater devotion; or even both may be considered as trifling, when compared with the greater disadvantages of extemporary prayer.

The Lord's prayer is a precedent as well as a pattern, authorised by Christ; and he also in this respect followed the example set by John the Baptist. Luke xi. 1.

[Upon this subject, Mr. Dymond remarks, "That there is no reason to suppose, from the Scriptures, that either Christ himself or his apostles ever used any fixed forms. If he had designed to authorise, and therefore to recommend their adoption, is it not probable that some indication of their having been employed would be presented? But instead of

57 What reasons to suppose so?

58 What is the first disadvantage of a liturgy?

59 What is the second?

60 How may these disadvantages be overcome?

61 What is said of the Lord's prayer?

62 What does Mr. Dymond remark upon this?

this, we find that every prayer which is recorded in the volume was delivered extempore, upon the then occasion, and arising out of the then existing circumstances.

“Yet, after all, the important question is not between preconcerted and extempore prayer as such; but whether any prayer is proper and right, but that which is elicited by the influence of the Divine power. The inquiry into this solemn subject would lead us too wide from our general business. The truth, however, that ‘we know not what to pray for as we ought,’ is as truly applicable to extempore as to formal prayer. Words merely do not constitute prayer, whether they be prepared beforehand or conceived at the moment they are addressed. There is reason to believe that he only offers perfectly acceptable supplications, who offers them ‘according to the will of God,’ and ‘of the ability which God giveth.’”—*Essays on the Principles of Morality*. Essay 2. chap. 1.]

A public liturgy should be—1. Compendious; 2. Expressive of the Divine attributes; 3. Recite only the wants which the congregation are likely to feel interested in; and, 4. Contain the fewest controverted propositions possible.

1. The liturgies of most churches might be abridged one half, and yet no distinct petition be omitted. But such brevity would interfere, if not with the design, at least with the utility of public worship. For, it is not to be supposed that the devotion of the congregation will be so active, that every part will be attended to by every hearer; and as the attention of **most** men is apt to wander and return at intervals, it must be recalled by a variety of expressions, so suited to the different conditions of men that even the most heedless may catch a portion of the spirit of devotion. On the other hand, the service must not be tedious, for that would beget in many a dislike for public worship, or a drowsy forgetfulness of it when present; and in general would cause that indolence might find an excuse for nonattendance, and piety be disconcerted by impatience.

The length and repetitions in the liturgy of the Episcopal

63 What kind of prayer is found in Scripture?

64 What farther remarks does he make upon prayer?

65 What are the properties required in a public liturgy?

66 What effect would be occasioned by abridging the liturgies? Why?

67 Why should liturgies not be long?

Church are the result of a union into one service of what was originally found in three. To remedy this evil, few, except those influenced by the dread of innovating in religion, would be disposed to object to such omissions as the combination of several services must necessarily require. If, together with such omissions, the Collects, Epistles, and Gospels were compiled and selected with more regard to unity of subject; and the choice of the Psalms and Lessons either left to the minister, or better accommodated to the capacity and to the instruction of the people; the liturgy of the Episcopal Church would find but a few amongst friends disposed to blame its defects, and many even amongst other denominations ready to admire its beauties. With a style calm yet not cold, and affecting though sedate, it arrests the attention by the solemnity, and retains it by the variety in the service; and the transitions from one office to another, being diversified like the scenes of a drama, produce the corresponding effect of excited feelings: and in the Litany, where there is a complete enumeration of wants and sufferings, a petitioner will find whatever he can desire or deprecate, expressed in language at once tender, simple, and effective.

II. That it is expressive of the Divine attributes.

On this point no care can be too great. For, as the popular notions of God are formed from the information obtained in religious assemblies, the error of one must lead to the error of many; and as every theoretical opinion on such subjects leads to practical results, the purity or impurity of morals will be affected by the truth or corruption of the forms of public worship.

III. That it recites such wants only as the people can feel an interest in.

As all forms of prayer are intended to keep alive the spirit of devotion, and as such devotion must in some measure be connected with the individual interest of the devotee, there should be introduced no topic which may be likely to damp devotion, by an allusion to points in which any person is

68 What is said of the liturgy of the Episcopal Church?

69 What alterations does Dr. Paley propose?

70 What is said in commendation of it?

71 Why is it necessary that a liturgy should be expressive of the Divine attributes?

72 What is said of its embracing the individual wants of the people?

entirely lost sight of. Hence, the state prayers should, if necessary to be introduced, be few and short; and all state style banished, as ill according with the nothingness of human greatness, of which every act, that carries the mind to God, presents the idea.

iv. That it contains as few controverted propositions as possible.

While we allow to each church the right and even the expediency of subscribing to its peculiar creed, we see not any reason that the tenets of that creed should be continually shown in the *religious services* of the congregation. For the introduction of controverted points tends to exclude some, and thus to interfere with the object of public worship, and occasion an evil at least to *them*, and no advantage or satisfaction to the *rest*; unless it be said that it is a sin to agree in religious exercises with those, from whom we differ in some religious opinions. If, however, a difference exists to an extent such as is found between the Trinitarians and Unitarians, there can be no compromise in their prayers, and secession is inevitable. All other questions not touching the essentials of religion, are best passed over in silence; for if mooted, each sect will assert the truth of its peculiar tenets with polemic zeal; and while both are guilty of the evils of schism, neither can show the expediency of excluding any from their communion, by mixing up with divine worship, doctrines unconnected with the pure spirit of devotion.

#### CHAP. VI.—USE OF SABBATICAL INSTITUTIONS.

An assembly cannot be collected, unless the time of assembling be known beforehand. If required to be held frequently, it is best held at stated intervals; and to prevent, at such intervals, the labor and business of one from interfering with the devotion of another, the day of assembling ought to be the same for all. So that, if public worship is a duty, it is equally a duty to set apart some periods to be universally observed in the performance of it. But as the celebration of Divine service does not occupy the whole day,

73 What is said of its embracing controverted propositions?

74 Are there any sectarian opinions which are necessary to be incorporated in our prayers?

75 Why is it necessary to have a set time for religious meetings?

76 What is said concerning accounting the whole day as sacred?



the portion unoccupied is a mere rest from the daily business of life ; and, unless there is a Divine command for the Christian Sabbath, he who undertakes to defend the observance of the entire day, as required by law in Christian countries, must show the expediency of such observance, considered politically.

First, then, such stated intervals of rest contribute greatly to the comfort of the laboring classes, as well by the positive relief to their bodies, as by the anticipation of prospective leisure ; the latter of which would be wanting entirely, if the relaxation were casual, even if it was more frequent than might be expected from the interested inhumanity of task-masters. Besides, an unexpected holiday comes unprovided with any duty or employment, and is therefore generally spent so as to make it rather a source of pain than of pleasure. Now, as the laboring classes form the great majority of mankind, the utility of the Sabbath in promoting general happiness is unquestionable ; and every man is morally bound, whatever may be his opinion respecting the origin of the institution, to uphold the observance of it, for reasons even of political expediency. Nor is there any loss to the community by such intermission of labor : for as in civilised countries there is rather a redundance than deficiency of operatives, the addition of the seventh day's labor would ultimately have no other effect than to reduce the demand, so that the laborer would suffer both from the addition to his labor, and from the diminution of his wages.

Secondly, persons of all ranks have, by the intervention of Sunday, some leisure, and not more than is barely sufficient to perform both the outward and retired duties of religion. True it is, that all do not so employ their leisure ; but that is the fault of the persons, and not of the institution ; and every one should be allowed the opportunity.

Thirdly, such intermission gives a day of rest to the animals employed by man ; a benefit expressly intended by the Divine Founder of the Jewish Sabbath.

It is true that none of the preceding reasons prove, why one particular day, or why one day in seven, rather than in

77 What is the first advantage in making it a day of rest ?

78 Of what importance is this advantage ?

79 Does the community suffer any loss by it ? Why ?

80 What is the second advantage of the Sabbath ?

81 What is the third ?

82 What is said of all the foregoing reasons ?



six or eight, should be preferred. But as these points are arbitrary in their nature, and as they are already established, our obligation applies to them as long as we allow the necessity of some day of rest, and do not render universal a better plan than the one already in existence.

CHAP. VII.—SCRIPTURE ACCOUNT OF SABBATICAL INSTITUTIONS.

This subject, as connected with Christian morality, turns on two points:—

I. Does the institution of the Jewish Sabbath extend to Christians?

II. Has Christ, or have the apostles, sanctioned directly or indirectly the change of the Sabbath from the last to the first day of the week?

In treating of the first question, it is necessary to inquire a little into both the origin and the duties of the Jewish Sabbath. With regard to the origin, it appears that although it is said in Genesis that God blessed and sanctified the seventh day, because on that day he rested from the work of creation; still it does not appear from the subsequent mention of the Sabbath, that this was the time of its first institution. For we learn that when the Israelites were fed with manna in the wilderness, “that on the sixth day they gathered twice as much” as on the other days; and that when the rulers of the congregation told Moses of it, he replied, “This is that which the Lord hath said, *To-morrow is the rest of the holy Sabbath unto the Lord*; and that which remaineth over, lay up for you, to be kept until the morning.” This they did; and on the next day, Moses said, “Eat that to-day; *for to-day is a Sabbath unto the Lord*; to-day ye shall not find it in the field. Six days ye shall gather it, but on the seventh day, which is the Sabbath, there shall be none.” And when, in violation of that order, some had gone out to gather manna, and found none, we read that “the Lord said unto Moses, How long refuse ye to keep my commandments and my laws? See, *for that the Lord hath given you the Sabbath*, therefore that he giveth you on the sixth day the

83 What two questions on the subject of the Sabbath?

84 What inquiries are embraced in the first question?

85 What does Dr. Paley say of the origin of the institution?

86 What argument does he bring from the gathering of manna?

bread of two days: abide ye every man in his place. So the people rested on the seventh day." Exod. xvi.

Shortly after this, it was introduced into the Decalogue, only in confirmation of a previous commandment. Now, in my opinion, the transaction in the wilderness just recited, was the actual institution of the Sabbath. For, had the Sabbath been instituted at the time of the creation, and had it continued from that time to the departure of the Jews from Egypt, it is strange that no mention of it, or even allusion to it, should be made, either in the history of the world before the call of Abraham, or in the lives of the three Jewish patriarchs. Besides, neither in the passage of Exodus is any intimation given that the Sabbath, then ordered to be observed, was the revival of any ancient institution which had fallen into neglect; nor is any notice taken of such neglect on the part of the wicked of the earth in the time of Noah; nor, lastly, do we read of any permission given to the Jews to dispense with the observance of such a law, during their captivity in Egypt, or on any other public emergency.

Since then no mention is made of either the observance or non-observance of the Sabbath for a period of 2500 years, it is fair to infer that the institution was not known; and that it is mentioned in Genesis only as a reason, which it was natural for the historian to give, why the seventh day alone was ordered to be kept holy. And it may be well to mention that the words do not assert that God *then* blessed and sanctified the seventh day, but that he blessed and sanctified it *for that reason*.

This interpretation is confirmed by the words of Ezekiel; "Wherefore I caused them to go forth out of the land of Egypt, and brought them into the wilderness, and I gave them my statutes;—moreover, *I gave them my Sabbaths*, to be a sign between me and them."\* Nehemiah also seems to agree with Ezekiel in fixing the date of the institution of the Sabbath; although it must be confessed, that less reliance can be placed on his testimony, from his inverting the real order of events. His words are, "Thou camest down from Mount

87 Why does he think that the Sabbath was not instituted before this?

88 What does he say of the passage in Genesis ii.?

89 By what two prophets does he think his interpretation confirmed?

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\* Ezek. xx. 10—12.

Sinai—gavest them commandments, and madest known unto them thy holy Sabbath, and gavest them bread from heaven.”\* Now, what else but “first instituted” can be meant by “given” in Ezekiel, and “madest known” in Nehemiah?

[As for the alleged silence respecting the observance of the day, Dr. Dewar replies, “This is, indeed, slender ground on which to found an argument; and were it not maintained by a writer of Paley’s respectability, the time bestowed in noticing it, would be idly employed. For, if there is no mention of the observance of the Sabbath during the patriarchal age, neither is it once mentioned in the histories of Joshua, the Judges, Samuel, and Saul; that is, during a period of about five hundred years. It needs not surprise us, that in the brief notices recorded of the persons who lived between Adam and Moses, there should have been so great a silence concerning the Sabbath, since we know that things occurred during that period of which the sacred historian makes no mention. Are we not assured by the Apostle Jude, that Enoch prophesied of the second coming of our Lord with ten thousand of his saints, to execute judgment upon all; while, but for the testimony of this apostle, the circumstance would have been altogether unknown to us?

“We maintain however that there are allusions to the institution of the Sabbath, both in the sacred and profane history of the period in question. There is reference, as it appears to me, to the division of time into weeks by the Sabbatical institution, in the conduct of Noah while in the ark. See Genesis viii. 10—12. where frequent mention is made of *seven days*. Nor is it less clear from a paragraph in the history of Jacob, that this division of time was viewed as a matter of course, and consequently, had been fixed previously to the era at which that patriarch lived. ‘Fulfil her week,’ &c. Gen. xxix. 27. The counting of time by weeks was common also among all ancient nations,—Indians, Syrians, Chaldeans, Egyptians, the Greeks, and the Romans, as well as every other people of whom we have any record. How can this authenticated fact be accounted for, but on the supposition that the Sabbath was instituted at the time referred to in the book of Genesis?”

90 What does Dr. Dewar remark concerning Dr. Paley’s argument?

91 What does he account as allusions to the Sabbath?

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\* Neh. ix. 13--15.

As it regards the origin of the Sabbath being found in the sixteenth chapter of Exodus, Dewar goes on to say,—“On the reading of this passage, the first thing that occurs to the mind is, not certainly that the Sabbath was a new institution with which the Jews were formerly unacquainted, but that the division of time into weeks was well known to them. Moses and the elders speak of the days of the week, and not of the days of the month. The next thing that strikes the unbiassed reader in this passage is, that the people, aware that the seventh day was the Sabbath, gathered of their own accord twice as much of the manna as they were wont to gather; lest, by deferring it till the morrow, they might break the rest of the Sabbath. This impression is strengthened, when we remember that they had been previously commanded to gather daily of the manna *only* what was sufficient for the daily supply of themselves and families. In the address itself of Moses to the elders, it is evidently taken for granted that they were previously acquainted with the institution of the Sabbath.

“The other passages quoted from Ezekiel and Nehemiah, are perfectly consistent with the views I have already given. The posterity of Abraham were, indeed, laid under additional obligations to give a willing obedience to the whole will of God; and these obligations, arising from their redemption from Egyptian bondage, might be adduced as so many supplementary motives to their walking in all the ordinances and commandments of God. In the same way that we are urged by the love of Christ, by the worth of his precious blood, and by all other Christian motives, to obey those laws which are binding on us as intelligent and accountable creatures; and which we, and the whole human race, should be bound to obey, though there had been no discovery of the plan of redeeming mercy.” See also Exodus xxxi. 16. *Elements of Moral Philosophy*. Book iv. chap. 12.]

With regard to the *duties* connected with the Sabbath, we find that, not only Jews by birth and profession, but all who resided within the territories of the Jews, together with their slaves and cattle, were required to rest on that day, under

92 What does Dr. Dewar say on the passage in Exodus xvi.?

93 How does he explain the passages in Ezekiel and Nehemiah?

94 What were the duties of the Sabbath among the Jews?



pain of death.\* And besides, the Sabbath was to be solemnised by a double sacrifice.† Also, holy convocations, i. e. assemblies, probably for the purpose of public worship or religious instruction, were directed to be held on the seventh day, "the Sabbath of rest."‡ So scrupulous, in fact, were the Jews in abstaining from every thing that could be deemed labor, that they neither dressed meat for their food, nor even walked more than a Sabbath-day's journey, which was about one mile. In the Maccabean wars they suffered themselves to be slain rather than violate the Sabbath by working in their own defence; and though they had in the siege of Jerusalem so far overcome their scruples, as to defend themselves when attacked, they still refrained from all military operations on that day. After the establishment of synagogues, (of whose origin nothing is known,) the people assembled on the Sabbath to hear the law read and explained, and probably for the exercise of public devotion.

The Sabbath day was the seventh; and by the Jewish reckoning commenced at six o'clock on Friday evening and lasted till the same hour on Saturday.

We now approach the main question, whether the command, by which the Jewish Sabbath was instituted, extends equally to Christians.

If the Sabbath was instituted at the creation, its observance no doubt is binding on all who acknowledge the Scriptures; but if the command was first promulgated in the wilderness, it was of course intended for the Jews alone, unless internal or external evidence prove that it was designed for others likewise.

Now as the Sabbath is described in Exodus§ and Ezekiel|| as a sign expressly between God and the Israelites, it does not seem easy to understand how it could be a sign between God and other nations also. If it was not, its observance was designed to be peculiar to that people in the same manner as some other appointed seasons; for example, the first and

95 What is the main question on this subject?

96 How will this question be affected by determining the time of the institution of the Sabbath?

97 What confirmation of the latter opinion is adduced?

\* Exod. xxxi. 15.

§ Exod. xxxi. 16.

† Num. xxxviii. 9.

|| Ezek. xx. 12.

‡ Lev. xxiii. 3.



seventh days of unleavened bread, the feast of Tabernacles and of Pentecost; all of which are recited with the Sabbath, in Exodus xxiii.

[The remarks last quoted from Dr. Dewar, relative to the love of Christ, apply equally as an answer to this argument. See page 171.]

And further, if the command by which the Sabbath was instituted be binding on Christians, it must be equally so as to the day, the duties, and the penalty; and this no one supports. We do not find that the Sabbath was enjoined by the apostles in Acts xv. 23—29, to be observed by the Gentile converts; and St. Paul evidently considers it as a Jewish ritual only, and not binding on Christians, when he compares such commandments to the “shadow of things to come, whose body is Christ.”\* [But the Sabbaths St. Paul speaks of are the *Jewish* Sabbaths. The first day of the week, or Lord’s day, is never called Sabbath in the New Testament.]

But to this view of the question it may be objected, 1. That the reason assigned in the fourth commandment for the observance of the seventh day as a Sabbath, namely, “because God rested on the seventh day from the work of the creation,” pertains to all mankind; and, 2. That the observance being commanded in the Decalogue, is, like the other laws of the same code, applicable to all.

But, to the first objection it may be replied, that the reason assigned in Exodus, is at variance with the one given in the fifth chapter 15th verse of Deuteronomy; which is, “that Israel was a servant in the land of Egypt, and that the Lord his God brought him out thence, through a mighty hand, and by a stretched-out arm.” Hence, from such discrepancy, no conclusion could have been drawn, had not a passage existed capable of settling the question, by showing that God’s rest from the creation is proposed as the reason of the institution, even where the institution itself is

98 What is said of this argument?

99 What objection to the Sabbath being binding on Christians?

100 What is said of the observance of the Sabbath by the apostles?

101 What has been thought to be St. Paul’s opinion?

102 What may be replied to this supposition?

103 What two reasons are recited by Dr. Paley in favor of the institution of the Sabbath at the creation?

104 How does he endeavor to do away the first reason?

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\* Col. ii. 16.

spoken of as peculiar to the Jews: "Wherefore the children of Israel shall keep the Sabbath—for a perpetual covenant and a sign between me and them for ever; for in six days the Lord made heaven and earth, and on the seventh day he rested and was refreshed."\* From these passages, we can understand that different reasons were assigned to meet different circumstances; for if a Jew asked why the seventh day was sanctified rather than the sixth or eighth, he was told because God rested from the creation on that day; but if he asked why his slaves also must rest, he was told, because he, who had been once a slave, was now able to take that rest which had been denied him in bondage; and thus the institution became a sign both of God's rest from the creation, and of man's rest from servitude.

But although in this view the extent of the obligation is not actually determined, still if the reason made it naturally right, or it had been mentioned with a view to the extent of the obligation; we should submit to the conclusion that all who are concerned in it, are comprehended in the command. But as the Sabbatic rest is a specific law, the reason cannot apply any farther than as it explains the lawgiver's design; which may be to account for the choice of the day, and not the extent of the obligation.

With regard to the second objection, that since the other commandments in the Decalogue are binding on all, so must the fourth be; we answer that, as the distinction between natural and positive duties was unknown in the earlier ages of the world, duties which are in fact limited in their nature are enumerated in Scripture as equally obligatory on all. Of such confusion of natural and positive duties, instances may be found in Ezekiel xviii. 5—9, and the Acts xv. 29.

II. If the law which ordained the Sabbath, be binding on Jews alone, it becomes an important question, whether Christ or his apostles did either directly enjoin, or indirectly appropriate, a certain day for the observance of Sabbatic duties.

The practice of holding religious assemblies on the first day

105 How does he dispose of the second?

106 What becomes an important question if we suppose that the original Sabbath was binding on the Jews alone?

107 What practice was universal in the early church?

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\* Exod. xxxi. 16, 17.

of the week was so universal in the early Christian church, that it is fair to presume it originated in some precept of Christ or his apostles. It was on the *first day* of the week that Christ appeared to his disciples assembled after his resurrection;\* and his second appearance was in like manner on the first day of the week following.† We read of the same custom in the Christian church of Troas, when Paul went there to preach;‡ a fact, which, from the manner in which it is related, shows that the practice of the disciples coming together to break bread on the first day of the week had become established and familiar. St. Paul, too, enjoins the Corinthians “on the first day of the week to lay by a store, as God hath prospered each man, so that there be no gathering when he came;”§ a direction which affords a probable proof, that such day was distinguished from the rest by some religious application of it. Lastly, as mention is made of the *Lord’s day* in the Revelations,|| it is plain, that since no other day was so called, it must mean the first day of the week; and John’s use of it shows that this distinctive name was well known to the churches.

But though the preceding arguments go to prove that the first day of the week was appropriated to the holding of religious assemblies for the duties of devotion, still, in no passage of the New Testament is it even intimated that we are to cease from any labor beyond the time requisite for such assemblies. But this reserve will appear only natural, when it is considered that the observance of a new Sabbath would have been impracticable in the primitive state of the church. During Christ’s personal ministry, his religion was preached to the Jews alone: but they had already one Sabbath, which they were obliged to keep, and did keep; and to them a second would have been superfluous. On the other hand, although the Gentiles had no Sabbath, yet, as the earliest converts to Christianity were chiefly of the lower orders, their time was not their own; and, consequently, it would have been useless to enjoin their observance of a day of rest,

108 Give some examples.

109 Do these arguments prove that there was no labor on that day?

110 Why was there no command to this effect?

\* John xx. 19.

§ 1 Cor. xvi. 2.

† John xx. 26.

|| Rev. i. 10.

‡ Acts xx. 6, 7.

which unbelieving masters and even the state would have forbidden from motives of private or public interest; especially as the people already enjoyed ample rest in the recurrence of numerous festivals. And to have insisted on such an institution, in defiance of public opinion, would have endangered, without necessity, the reception of the new religion; for the institution of a Sabbath is, in truth, so connected with civil life, and requires so much the support of civil law, that it can scarcely be made an ordinance of any religion which is not the religion of the state.

The opinions that Christ and his apostles meant to retain the observance of the Jewish Sabbath, with a change only of the day; and, (what is not actually improbable,) that the first day of the week was chosen in commemoration of the resurrection, are both unsupported by the language of Scripture.

The conclusion, then, (for we must follow wherever arguments lead,) is this; that the *assembling* on the first day of the week for public worship and religious instruction, is an ordinance of Christ; but to *rest* on that day from usual occupations longer than such religious duties require, is merely an ordinance of man; binding, nevertheless, on the conscience, like other human laws, from its tendency to increase human happiness; and acceptable, probably, to God, from its similarity to the institution given by himself to the Jews, for similar useful purposes.

[But Dr. Dewar says, "I have proved that the Sabbath is of *perpetual obligation*." And he makes the following reply to the question how it came to be changed from the last to the first day of the week. "We must bear in mind the perpetual obligation rests upon *that which constitutes the Sabbath*, and not on the *day* on which it is held. It was the Sabbath, and not the seventh day, that God blessed and sanctified. 'He rested the seventh day; wherefore the Lord blessed the Sabbath-day, and hallowed it;' that is the sacred rest to be enjoyed on that day. That day might have been any one in the week, as well as the seventh, had it pleased God to appoint it. And although there was indeed a pro-

111 Have we any authority that Christ and his apostles meant to retain the duties of the Christian Sabbath?

112 What is Dr. Paley's final conclusion on the subject of the Sabbath?

113 Has Dr. Dewar this opinion?

114 In his remarks on the change of the day of its observance, what does he say is necessary to be recollected?



priety in selecting the last day of the week at the time God had just finished the work of the creation; yet it is evident that God might at a subsequent period dissociate the Sabbath from this day, should circumstances arise to render it expedient. 'The transference of the Sabbath from the seventh to the first day of the week was for the best of reasons. It took place in consideration of its being the day on which the Saviour rose from the dead;—on which was finished that glorious work, in comparison of the greatness of which, the former creation should not be mentioned, nor come into mind. If it was expedient that the Sabbath should commemorate the deliverance from Egypt, is it not meet that it should now be a memorial of that great redemption from sin and death, in which all mankind are alike interested?'—*Dewar*. Book iv. chap. 13.

Dr. Dewar's proof that the Sabbath has been changed by divine authority from the last to the first day of the week, is the same as Paley, page 175.]

CHAP. VIII.—BY WHAT ACTS OF COMMISSION OR OMISSION  
THE SABBATH IS VIOLATED.

Since the obligation to observe the Sabbath arises from the public use of the institution and the authority of the apostolic practice, the manner of observing it ought to be that which best fulfils *these uses*, and conforms the nearest to that practice.

The utility of the institution consists in its tendency, 1. To facilitate the performance of public worship; 2. To increase the sum of human happiness by regular returns of rest from toil; and, 3. To give to persons, necessarily engaged six days of the week in worldly affairs, an opportunity to think of subjects connected with their eternal welfare.

Although amongst the early Christians the first day of the week was chiefly devoted to religious assemblies, yet we learn from Irenæus that the same day was reserved also for religious meditation. Wherefore, the Lord's day is violated, 1. By all such employments as hinder attendance on public

115 What does he suppose to be the reasons for it?

116 What should be the manner of observing the Sabbath?

117 What are the three uses of the institution?

118 How was the day spent by the early Christians?

119 By what three customs is the Lord's day violated?



worship, either entirely or in part, or do not leave time for religious reflections ; as the going of journeys, the paying or receiving of visits, or the employing of our time at home in writing letters, settling accounts, or reading books which bear no relation to the business of religion : 2. By unnecessary encroachments on the rest of persons in our employ : 3. By indulgence in recreations, whose levity is at variance with the graver duties of the day ; as hunting, shooting, fishing, and other diversions.

But it may be asked, wherein consists the difference, for instance, between walking out with a staff or with a gun ; and between playing at cards, or in passing the day in idleness ? To these, and a hundred similar questions, we reply,—that, if the observance of Sunday is to be retained at all, it must be retained by such visible distinctions as will best preserve the feeling of respect for the sanctity of the day ; that, draw the line of distinction where you will, many actions which are situated on the confines of the line will differ very little, and yet lie on the opposite sides of it ; and that every trespass upon that reserve which public decency has established, breaks down the fence by which the day is separated to the service of religion. And, if gaming were always as harmless as it is generally the reverse, still it would be ill suited for the occupation of a Sunday, because it has a tendency to destroy, by the excitement of hopes and fears, that tranquil frame of mind, in which the duties and thoughts of religion should always both find and leave us. Besides, as by the indulgence of such every-day amusements, a suspicion is generated in the minds of others, that we have a secret contempt for the Christian faith ; and as an example is thus held out to those, who want some excuse, and are content with any, for a neglect of the institution ; we are bound to adhere to habits, though founded on custom merely, provided such habits actually prevent a moral mischief. Nor can the example of other countries, more lax in this respect, afford any apology for similar irregularities in our own ; because a practice tolerated elsewhere, does not give the same offence as where it is prohibited.

120 What questions may arise from this ?

121 What is the first answer to this question ?

122 What is the second ? The third ?

123 What effect may our example have ?

124 What is said of any laxity in other countries ?

[But rather than to depend solely upon the *utility* of the institution, we would say with Dr. Dewar, "If the Sabbath, as has been proved, is of moral and perpetual obligation, it is clear that all are bound to observe it according to the designs of the institution. Now there is in the commandment an express prohibition against all secular pursuits. Nor can any part of that seventh portion of our time which God commands us to devote to him, be given to any mere worldly avocation without a violation of the sanctity of the Sabbath; and, consequently, without dishonor to the authority of heaven. Nor is it less manifest, that we are bound to abstain from all secular pleasures on the Sabbath; and, as we regard the authority of heaven, to shun whatever has a direct tendency to divert our minds from the holy purposes of the day, and to unfit us for its exercises."—*Dewar*. Book iv. chap. 14.]

## CHAP. IX.—OF REVERENCING THE DEITY.

As the sense of awe which is felt by the mind when contemplating the Supreme Being, and which forms a great security against vice, is produced, in a great degree, by the habit of using expressions of reverence; so it is destroyed by the habit of using the familiar language of levity in which many indulge when speaking of the Deity or his works.

God has forbidden, no matter for what reason, the vain mention of his name. Now, the mention is vain, when it serves no good purpose, or even when it is used on occasions unconnected with moral or religious duties. And though the Jews interpreted the commandment, as prohibiting the use of the word JEHOVAH alone, the name which God had given himself,\* Christ has extended the commandment to every thing associated with the idea of God.†

125 What reason stronger than that of utility, have we for the observance of the Sabbath?

126 Does this extend to the suspension of pleasures?

127 What may generate or destroy a reverence for the Deity?

128 What has God expressly forbidden?

129 When is the mention of it vain?

130 In what extent does this definition apply?

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\* Exod. vi. 3.

† Matt. v. 35.

The offence of profane swearing is aggravated when we consider that in *it*, duty and decency are sacrificed to the slenderest temptation. It is a practice which the least resolution can correct; and one would think there are no pleasures in it which it would be a pain to lose. Besides, the habit of swearing is prejudicial to the character of the individual, as it betrays a contempt of positive duties, or rather of those duties for which the reason is not so plain as the command; and this contempt affords proof of a disposition which is not influenced by the authority of revelation.

A ridicule of the language, persons, and rites of religion falls under the spirit of the third commandment, as explained by Christ. Besides, such conduct is inconsistent with a religious frame of mind, which cannot view with pleasure the ridicule of objects in which it feels the deepest interest, and which indignantly rejects every attempt to entertain it with jests upon serious concerns. While the infidel laughs at the superstition, credulity, and fanaticism of the religionist, he does not see that the weakest devotee, who zealously aims at securing what he thinks to be eternal happiness hereafter, is a more rational being than he who has no concern about a future state. For on this subject, indifference is the very height of folly.

Christianity is but ill defended by refusing to listen to the objections of its adversaries. But serious arguments are fair on all sides; and whilst we would have no inquiry restrained by other laws than those of decency, we are entitled to demand that Christianity be not made an arena for the display of mere raillery; that the cause be tried on its own merits; and that, without any appeals to the passions, or any attempts to pervert the judgment by sinister influence, assent be gained by evidence conducted with logical precision, and with the sole desire to arrive at truth; and that, whatever objections are started, they be put in such a shape as to invite inquiry, not evade it. If with these equitable conditions, we compare the war that has been waged

131 What is said of this offence?

132 What is implied by the habit?

133 How has the spirit of the third commandment been explained by the Saviour?

134 What may be said of the sneering infidel?

135 How should objections to Christianity be treated?

136 What are we entitled to demand on behalf of Christianity?

against Christianity, its defenders have much to complain of, on the ground of their adversaries' conduct. For, by one unbeliever, all the follies of the popular creed of superstitious ages are assumed as the doctrines of Christ; with the view to overturn the latter by mixing them up with the absurdities of the former. By another, the vices of the sacerdotal order, their mutual dissensions and persecutions, and their encroachments upon civil and religious liberty, have been displayed, not with a view to guard the Christian laity against the repetition of clerical iniquity, but to lead the way to an insinuation that religion is a fable, imposed on the fears of a credulous people, and upheld by the fraud of a crafty priesthood. And yet, what has the character of the clergy to do with the truth of Christianity? Ecclesiastics are but men; and, endued with the passions of men, are like other men influenced less by the duties of a secluded profession than by the temptations of our common nature. A third has collected accounts of all the wars and massacres occasioned by religious zeal; as if the views of Christians were a part of Christianity; intolerance and extirpation precepts of the Gospel; and as if its spirit regulated the intrigues of state craft, or authorised the cruelties of superstition. By a fourth, the variety of popular religions, the rise and fall of hostile sects, the little reason with which creeds are formed, and the great rapidity with which they are forgotten; the indifference with which the national religion is at one time received, and the zeal with which it is at another time opposed; the bitterness with which men contend for tenets and rituals of whose meaning and origin they know nothing; and, lastly, the confidence with which the doctrines of Christ or Confucius, and the laws of Moses or Mahomet, are taught or rejected by nations, according as they live on the opposite banks of a river, and within or without the boundaries of a particular state, and sometimes by the very same people to whom the chance of a battle has given a change of masters and religion at the same moment; these points are, I say, produced as proofs against the truth of

137 Has this always been granted?

138 How has Christianity been treated by one?

139 How by another?

140 How may he be answered?

141 What has been the attack of a third?

142 What has been the attack of a fourth?



Christianity ; and, being set off with a vivacity of style, and aggravation of circumstances, they lead persons to class the Christian religion of the present day with the superstitions of the past. But this is to deal dishonestly with the subject and the world ; for the same representation might be given, whether Christianity be true or false. Besides, may not truth, as well as falsehood, be taken on credit ? and may not a religion be founded on evidence accessible to all who are competent to inquire, and yet be received on authority by persons who cannot go into all the details of the evidence ?

But if the matter of such objections be reprehensible, still more so is the manner in which they are brought forward. Infidelity is served up in every alluring shape ; in verse and prose, in fable and history, in covert hints and bold assertions, in books of travels, philosophy, and natural history ; but seldom with sober argument or pains-taking examination. The coarse buffoonery and hoarse laugh of older scoffers, only because they are disgusting to modern delicacy, have given place to refined banter and playful wit. An eloquent writer, besides his more direct and fairer attacks on the Gospel history, has woven into his narrations a continued sneer on the Christian religion, its authors, and its patrons. But who can refute a sneer ? or who can scrutinise, one by one, the validity of the insinuations which crowd his pages ? or who can suspend curiosity, and stop to examine references and weigh reasons, for the truth or falsehood of every sly allusion or passing sarcasm to the disparagement of the Christian's creed ? and yet, these sneers, insinuations, and sarcasms, may root out the persuasion of Christianity from the mind of a thoughtless reader.

Nor is this all. Even the poisoned arrows of obscenity have been directed against Christianity ; and doctrines the most pure have been profaned by a union with impure images ; and as lascivious ideas are the result of sensations the least under the control of reason, the imagination has been worked on to reject the authority and evidence of Christianity by the seasoning of ridicule with obscenity, by which it becomes doubly as strong as it naturally is. Neither is the crime and danger less, though the impurity of the

143 What reply may be given to all these objections ?

144 How has infidelity been brought before the public ?

145 What remarks on this unfairness ?



thought be covered with the thin veil of language more refined.

Seriousness is not constraint of thought; nor levity, freedom; and as in such inquiries, the most important to man, truth alone is or ought to be the object, all must abhor such violations of correct reasoning; to say nothing of the indecency, which can be tolerable only to those who can see little in the Christian religion, even supposing its leading doctrines to be true. But to such adversaries we would say, that the announcement of a future resurrection alone is of inestimable importance to mankind; and well worthy all the accompaniments of religion. And, to the assertion that a future had been thought of before, without the Christian revelation, we reply that it was discovered, like the system of Copernicus, by a happy guess; that he alone discovers who proves; and that, as no satisfactory proof could be given without the aid of miracles,—the annunciation of the certainty of such a state, duly attested by miracles, was an event which the wisest would be the first to hail, as a solution of every doubt, and as a termination to otherwise fruitless inquiries.

146 What may be remarked of seriousness and levity?

147 What may we say to those who lightly esteem Christianity?

148 What may be said concerning the knowledge of a future state?

## BOOK VI.

## ELEMENTS OF POLITICAL KNOWLEDGE

## CHAP. I.—ORIGIN OF CIVIL GOVERNMENT.

GOVERNMENT at first was either patriarchal or military ; that is, of a parent over his family, or of a leader over his followers.

1. [*Of patriarchal government.*] Had men been born mature and independent at once, paternal authority would never have existed. But as the wants of infancy demand the care, so its weakness gives rise to the control of parents ; and thus a single family exhibits the rudiments and outlines of a government, where one directs and others obey. And therefore, governmental authority was, no doubt, coeval with the race of man.

To this, the first stage of government, [that is, of a parent over his young children,] succeeds another, where more families than one are united by the ties of consanguinity ; and where all, though adults, look up to the same head under the influence of feelings of respect. Because as the beginning of obedience is not recollected, that habit seems to the parties to be a law of nature ; and it cannot be abruptly withdrawn.

But though in the course of time, the common head drops into the grave, yet the interests which bound the families together during the lifetime of the patriarch, cease not at his death. And hence, so far from a dissolution of the society taking place ; it is probable that the members of it, having felt the advantages of possessing such a head, would either formally fix on a successor, or silently permit the vacant place to be occupied by one whose services had been useful during

1 What was government at first ?

2 What is the foundation of patriarchal government ?

3 When did it commence ?

4 What kind of government is likely to succeed parental authority ?

5 Would the death of the patriarch affect the common interests of the associated families ?

6 What might be caused by the continuation of their common interests ?

the lifetime of the deceased patriarch. Or, perhaps, the first ancestor, anticipating the mischievous effects of disunion, first prepared and then appointed a successor, to whose rule the other members of the family found it their interest to submit.

A clan, thus formed of many families who were sprung from one stock, might fulfil all the purposes of civil union. And as branches continually slipped off to settle in distant lands, separate societies would be established, united still by various bonds; such as marriage, mutual defence, conquest, &c.

II. [*Of military government.*] Respecting the origin of a military government, it is easy to understand how, in the case of wars offensive or defensive, a leader might be chosen; and how authority, given him for a single expedition, might be retained, at least, in the modified sense of influence, even in times of peace; and how a temporary power may be converted into one for life by the management of various motives of action, suited to the different feeling of partizans.

But how such a power, which has its origin in merit or management, should descend by inheritance, without any reference to the personal qualities of the successor, is a question not so easy for us to explain. It is probable, however, that hereditary dominion has been introduced from the united operations of many causes; such as the feeling of gratitude, by which a part of the respect due to the father is paid to the son; the mutual jealousy of other rival competitors; the support of adherents more interested in preserving than destroying the succession; and the experience of facts, which went to prove that any rule of succession is better than none, and that the one most easy and certain is that of consanguinity.

This account of the supposed origin of government, is confirmed by what we know of the condition of some uncivilized parts of the world; and what we read of in the histories of earlier times. Both conspire to show that nations are formed of single families, each under its own

7 What might possibly be provided for by the first ancestor?

8 How may originate a military government?

9 What attendant of this power is it not so easy to explain?

10 What is a probable explanation?

11 By what are these suppositions confirmed?

head, and united only for purposes of mutual protection; but not possessing, (because not wanting,) a system of laws and government. For that would be perfectly useless to persons occupied with the care of subsistence merely, and free to seek it how and where they best could, at nature's hands alone.

But if this is a correct view of the earlier stages of society, how shall we account for the existence of great empires in remote ages, and the rapidity with which they rose from a state of comparative nothingness? The fact is, that the formation of such extensive empires was facilitated by this very multitude of clans, unconnected with or hostile to each other. For when one tribe had by any means got the start of the rest, it could, as Rome in truth did, under the conduct of a skilful and daring chief, easily subdue by force or gain by alliance the weaker neighboring states, before they felt the necessity, or possessed the means, of confederating against the common foe.

With regard to the conclusion to be drawn from the preceding theory, it is fair to infer that the first form of civil government was a monarchy; being merely the result of the principles which regulated single families, and armies, each under its own head.

#### CHAP. II.—HOW SUBJECTION TO CIVIL GOVERNMENT IS MAINTAINED.

There is nothing in the history of man more surprising than the phenomenon of the almost universal subjugation of strength to weakness; as shown in the fact of millions of robust men, in the full exercise of their personal faculties, waiting on the will of a child, a woman, or a fool. But though it be an extreme case to suppose a vast empire under the subjection of a person the weakest in intellect or the most debased by vice; still, as in governments even the most popular, the physical strength resides in the many, it is difficult to understand how a moral strength should exist in

12 What was the civil state of the primary nations?

13 How will this account agree with the formation of extensive empires?

14 What inference may be drawn from this theory?

15 What surprising phenomenon do we observe in political affairs?

16 Can this remark be applied to popular governments? Why?

the few, powerful enough to control the many. Nor is the difficulty solved by asserting that civil governments are upheld by standing armies; for the question still is, how are these armies themselves, the masters over the many, made to obey the commands of the ruling few?

The fact is, that such submission is not the result of one, but of many causes; each operating on different portions of the community, and thus producing a similarity of conduct from principles extremely various.

These principles are—1. Prejudice; 2. Reason; 3. Self-interest.

1. The prejudice which influences those who obey, is founded on long established customs. In monarchies and aristocracies, these customs operate in favor of particular persons; in democracies, of particular institutions. And as the whole course of civil life is regulated by such prescriptions, the prejudice that is founded upon them, must needs take a deep root. All the demands, made by the privileged orders on the less fortunate part of society, rest, as many think, on prescription alone; and to that law, when demands are contested, is the appeal made. Hence, persons learn to transfer to the government the same prejudices in favor of prescription, which they feel in the case of individuals; and consider that the sovereign has a right to that obedience which has been given him of old, and that in demanding it he only claims what is justly his due.

In hereditary monarchies, the prescriptive title is strengthened still further by the introduction of a feeling of sacredness attached to the persons of princes. Of this feeling all princes have been quick to take advantage; and by the assumption of titles, suited rather to the majesty of the Deity than to his self-called representatives on earth, and by the adoption of the religious ceremonies of investiture and

17 Does not the fact of the government's employing standing armies solve the mystery?

18 What does such submission result from?

19 What are the three prominent principles?

20 By what means does prejudice assist rulers?

21 How does it operate in monarchies and aristocracies?

22 How in republics?

23 Is this prejudice strong? Why?

24 How is this illustrated?

25 How is this prescriptive title strengthened in monarchies?

26 What are the means that have been used?



coronations, they have increased both their actual power and ideal importance. And so well has the folly of man kept pace with the impiety of the prince, that an emperor has been worshiped as a present God; and even to this day, the Lama of Thibet is accounted the immortal God himself, the object at once of civil obedience and religious adoration; a singular instance of the facility with which human credulity may be abused, and of the extent to which it can be carried, when the object is to produce a reverence for a king, by working on the religious principles of mankind.

II. They who obey from reason, are impelled to allegiance by perceiving the necessity of some government, the mischief of civil commotions, and the difficulty of resettling the state when it has been once disturbed.

III. He, who obeys from self-interest, is careless of the general consequences of resistance; but quite alive to that diminution of his individual ease and comforts which he would suffer by nonobedience. Or, even, if disposed to resist, he is restrained by the fear of falling into a worse situation than his present one, when arrayed singly against the powers that be, and uncertain of support from others.

From this account of the principles which lead men to obey civil governments at all, governors may learn,

1. That, as the physical strength resides in the governed, it is unwise to rouse a power, which, when once excited, can overturn the most deeply rooted dominion; and that as authority is founded on public opinion, that public opinion must be treated with respect, and managed with delicacy.

2. That, as government owes its support to the fact of persons thinking that custom is right, every change of custom diminishes the stability of the opinion of its power. And hence, slight evils ought to remain uncorrected for fear of disturbing antiquated prejudices; and even the charm, which the multitude feel in names, is not to be despised.

27 What have been the effects of such expedients?

28 How does reason occasion some to obey?

29 What effect has self-interest upon some?

30 What caution is first suggested to rulers from the foregoing accounts?

31 What is the second caution?

32 What follows from this caution? Give an example.

A knowledge of this feeling led some of Cromwell's party to advise his assumption of the title and ensigns of royalty, with a view to satisfy those, who would otherwise be offended at the novel name of Protector; while a similar perception of the magic of a name led others to oppose the measure, through the fear that veneration paid to titles, would endanger the liberty of the commonwealth.

3. That the government may be too secure. Although the greatest tyrants have been those, whose titles were the least questioned; still, when they became too secure in the opinion of their rights, their lofty notions have received a check either by a partial deprivation of their power, or by an entire disruption of their authority. [The latter effect was seen in our revolution, which absolved us from all allegiance to Great Britain.]

4. That as a want of communication amongst the disaffected is one of the principal preservatives of civil authority, every state ought to prevent its subjects from congregating in masses. Because, as such bodies are influenced by a similarity of interests on questions of religion or polity, they are wont to offer the most desperate resistance to authority; since one and all feel, that subjected equally to oppression, they can break it only by united exertions. Hence, there is danger of collecting men into large towns or crowded districts, as is done for the purposes of trade in manufacturing countries. In such cases, the many soon learn the secret of their strength, and impart confidence to each other by assurances of mutual support; while the propinquity of habitation, and intercourse of employment, enable the passions and counsels of the combined parties to circulate with ease and rapidity; so that the most dreadful uproars frequently arise from the slightest provocations. Such means are like a train that is laid, which needs only a spark to produce an explosion.

#### CHAP. III.—DUTY OF SUBMISSION TO CIVIL GOVERNMENT.

The last chapter touched on the *motives* which lead to civil obedience; the present relates to a different point, viz. the reasons which make that obedience a *duty*.

33 What is the third caution? Illustrate.

34 What is the fourth caution? Why? Illustrate.

35 What is the difference between the subject of this chapter, and that of the last?

To prove civil obedience to be a moral duty, Locke and others have referred to a supposed compact between the citizen and the state, which, like other compacts, is binding on the parties; and as the citizen has in such compact promised fidelity, he is morally bound to keep his promise. This compact has been represented as twofold.

1. Express, and entered into by the founders of the state, convened for the purpose of settling the terms of their political union. At that time, the whole body agreed to be bound by the decisions of the majority; which, either then or subsequently fixed some fundamental regulations, and then constituted a standing legislature, composed of one or more persons who were appointed according to their primary rules. To this legislature they deputed the power of making laws, to which, all, according to the original compact, were bound to conform. This transaction is sometimes called the *social compact*; and the original resolutions compose what are called the *fundamental laws of the constitution*, which are appealed to as the ground for the prerogative of the rulers, and the birth-right of the people.

2. Tacit, and adopted by all who succeeded the founders; and who, by accepting the protection of the society, virtually consented to abide by its laws; just as, at present, he who enters a private society, tacitly engages to conform to its rules, since he knows that he is admitted only on such terms.

But this account of the matter is false in fact; and, if it were true, it would not be admissible, as it leads to dangerous conclusions.

No such compact was ever made; for it could not have been made, without supposing, what is impossible, that savages could deliberate on topics which civil life alone suggested. But though no government began from this original, some imitation of a social compact might have taken place at a revolution. In these United States, for instance, the people

- 36 How have some proved that civil obedience is a moral duty?
- 37 What is the first kind of the supposed compact?
- 38 What are the conditions of this contract?
- 39 What is this transaction called?
- 40 What is the result of it?
- 41 What is the second kind of the compact?
- 42 Is this account true?
- 43 Why must it be false?
- 44 What may be a near imitation of such a compact?
- 45 Give an example.

did assemble to elect deputies for the express purpose of forming a constitution; and the deputies so elected did frame a government, and erect a perpetual legislature, invested with the power of making laws, which should be binding on the very people by whom that legislature had been elected. Yet even here much was presumed to be already settled: for even the qualifications of voters, and the mode of electing the representatives, were modeled after the older forms of government. And as in our national origin, there was wanting that from which every social union should set off, and which alone makes the resolution of the society the act of each individual, viz. the willing consent of *all* to be bound by the decision of the majority; the compulsory obedience of the minority became an act of oppression on the part of the majority, and at variance with the equity requisite for a civil union.

But, it is said, the existence of this original compact is merely assumed, with a view to explain the grounds of the relative duties of rulers and subjects. To this it is replied, that if the compact did not exist in reality, it can afford no foundation for real duties. But so far from this compact being considered as a fiction, it is constantly appealed to as a reality, whenever mention is made of the fundamental laws of the constitution, of the inherent rights of the prince or people, or of usages transcending the authority of the existing legislature. And the object of such appeal is to show, that as certain rules were established when the government was first settled, and as all subsequent assemblies derive their rights only from the primitive one; the former can in no wise exceed the limits which were prescribed to it by the latter. They say moreover, that the primitive members of the state differ from their successors in this alone, that the former bound themselves to obey the government by an express stipulation, whereas the allegiance of the latter, is tacitly confirmed by the performance of certain duties, in

46 Why was it not a complete instance of the social compact?

47 What was wanting in our national origin?

48 Is it contended that there ever was actually such a compact?

49 But what is the idea of its existence when it is appealed to?

50 What is the object of the appeal?

51 How do those who appeal to it devolve its obligation upon the moderns?



return for protection and the possession of certain privileges. But this argument crumbles under close examination.

For in all stipulations, expressed or implied, the parties concerned must not only possess the liberty of assent or refusal, but be conscious also of possessing such liberty. Now, so far from possessing this liberty either in fact or in idea, the subjects of modern states are not conscious even of the existence of any such stipulation with the government, by virtue of which they are free to choose whether they will or will not be bound by the acts of the legislature; and while ignorant that a mutual promise of protection and obedience has been required and given, they do not, even for a moment, believe that the validity or authority of the law depends on their recognition or assent. Now, as no arguments can excuse or supply this defect of a consciousness of liberty, all suppositions built on such defective principles must be erroneous. Still less is it possible to reconcile, with any idea of stipulation, the practice of founding allegiance on the accidental circumstances of birth; that is, of claiming as subjects those who are born within the dominions of a particular state. And, further, if the subject be bound only by the express stipulation of his progenitors, or his own tacit consent as expressed by his act of residence in the country; how can we defend the right, which all sovereigns claim, of preventing their subjects from leaving the realm?

But, in truth, the whole question about the supposed social compact would merit little discussion, and less opposition, did it not lead to conclusions unfavorable to the happiness of society, by starting questions that ought not to be mooted, by perpetuating evils that ought to be abolished, and by giving rise to constant changes of government.

1. For if a subsisting legislature derives all its authority only from inheriting certain powers granted by the primitive convention, and if those powers are limited by certain resolutions, supposed to have been framed by such an assembly; not only may the deliberations of the legislature be embarrassed, but even its authority endangered. For as it is

52 Is this argument correct? Why?

53 What reasons against it may be shown by founding allegiance on circumstances of birth or residence?

54 Why is this theory worthy of discussion?

55 What is the first unfavorable conclusion that it would lead to?

56 Why would that conclusion be injurious?



impossible to determine the number or nature of such supposititious fundamentals, any point may be agitated as one of them, and thus become the pretext for disputing law, whenever it may suit our individual interest.

2. If the subject owes obedience by virtue of a compact, he is compelled to abide by that form of government which he finds established, however inconvenient or absurd it may be. Because, by the law of contracts, no one can retreat from an engagement on the ground of the inconvenience of its performance. But if the social compact is not to follow the general law of contracts, it is an abuse of terms to call the relation between the state and subject by such a name; and a mere waste of time to reason on such misnomers, which can lead only to misunderstanding. It is true that such a compact will justify the subject in resisting any encroachments made or designed by the state on his liberty; but he can have no right to resist the established form of the government, and still less can he attempt to alter it without the assent of the governors. And as governors are not likely to assent to any diminution of their power, he will be morally obliged to submit to the despot under whom he may be living, if that despot, in exacting the most rigorous servitude, still keeps within the terms of the agreement. When the state endeavors to step beyond the contract, the people may vindicate their rights by force; but to impose any new limitations on the reigning power, and in opposition to it, would be an infraction of the original compact.

3. If the duty of allegiance be founded on agreement, and if there be any analogy between the rules of the social compact and of contracts in general; every violation of such agreement on the part of the rulers, would dissolve the government, precisely as other contracts are dissolved by a similar violation on one side. Now, as the *terms* of the original compact exist nowhere positively, they can only be inferred; and as different inferences may be drawn by different parties from the same undefined view of the prerogatives of the government, and of the rights of the people; both eventually will, in vindication of their respective

57 What is the second unfavorable conclusion from it?

58 Why would that follow?

59 Why must the social compact follow the law of contracts?

60 Would this unfavorable conclusion follow in its full extent?

61 What would be the probable result?

claims, be guilty of aggressions, to be settled only by an appeal to arms. And thus the peace of society will be disturbed, by the vindication of the plea that a violation of the social compact justifies its dissolution.

Rejecting therefore the fiction or fact of a social compact, as unfounded in principle, and dangerous in application; we assign, as the only ground for civil obedience, the will of God, as collected from expediency.

God wills the happiness of man.

Now, civil society conduces to that end.

But civil society requires that each member be bound to support the interest of the whole.

Hence, if the interest of the whole be supported by obeying the established form of government, it is the will of God that each person obey such established form, so long as the interest of the whole requires it; that is, so long as submission brings to the whole fewer evils than resistance would.

On this principle, unresisting submission and unjustifiable resistance are equally excluded.

But it will be asked, who is to judge when the resistance is justifiable? We answer, every man for himself. For, in contentions between the rulers and ruled, the parties admit of no umpire; and the decision cannot be left to those, whose conduct has given rise to the question, and whose fate is too intimately concerned in the result. The danger of error and abuse is no objection to the rule of expediency; for, 1. Every rule is equally liable to similar danger; and, 2. The application of this, as of other rules which bind the conscience, must depend on private judgment. In the exercise of his judgment, however, it matters not whether a man be influenced by his own reasons, or freely adopts those of another.

The advantage of thus substituting expediency in the place

62 What effect would such a compact have upon the peace of society?

63 In what manner would it occasion that disturbance?

64 In advocating civil obedience, what ground for it, better than the social compact, do we assign for it?

65 What are the steps of argument by which we arrive at this conclusion?

66 How far does this obligation extend?

67 In this case who shall be the judge of duty? Why?

68 Is there no objection to this rule on account of error or abuse?

69 What reasons have you for this assertion?

of compact, as the ground of civil obedience, will be best seen by considering,

1. That it will be as much a duty to resist at one time, as to submit at another; for there are times, when the society will gain more by resistance than by submission.

2. That the right to resist does not depend on the grievance which is sustained or feared, but on the probable evils of resistance. Thus, at the revolution, because the probability of mischief was not so great as the likelihood of benefit, resistance was justifiable; but it would not have been, if the greatest probability had been on the side of mischief.

3. That when the government is once settled, no plea, founded on the injustice of its formation, can warrant resistance to it. Of all civil contests, few have been so futile, and none so furious, as those respecting a disputed succession. The allegiance of the subject is due, not to the person, but to the office of the ruler.

4. That not every stretch of prerogative, abuse of power, or neglect of duty on the part of the chief magistrate, or of one or both branches of the legislature, will justify resistance, unless the general consequences of the individual wrong are likely to be greater than the evils of disturbance. Still, all such acts, however trifling in appearance, must be opposed and punished even beyond their apparent insignificance; because such readiness on the part of the people to take alarm, is the best security for the preservation of liberty, which is most surely undermined by those encroachments that are made without opposition, or opposed without effect.

5. That no law or custom will be so binding, that it need be continued when public benefit shall demand its discontinuance. The prerogative of the chief magistrate, the powers of the legislature, and the rights of the people, are only parts of so many laws enacted for expediency; and may at any time be abrogated, if requisite for the public good. The falsely and foolishly called fundamental laws of the constitution, so far as perpetuity is concerned, have no

70 What is the first advantage obtained by adopting this rule?

71 What is the second advantage? Example.

72 What is the third advantage? Remarks.

73 What is the fourth advantage?

74 But should we let pass unnoticed trifling errors in our rulers? Why should we not?

75 What is the fifth advantage?

76 What follows from this?

place in our system. All the respect we hold due to such laws, is founded, not on their ancient institution, but present worth; and the unwillingness to alter them, can fairly rest only on the mischief which arises from frequent changes of government.

6. That, as all civil obligation is resolved into expediency, the same act, done under two different forms of government, is not to be viewed in the same light; and the act of oppression that would justify resistance in a free country, would not justify it in one that is not free. For as the expediency of resistance depends on the probability of success; and as the probability of success in the latter country is less than in the former, the expediency of submission becomes greater in one case than in the other. Again, as it is expediency which constitutes the moral obligation to obey, the rights connected correlatively with such obligation must vary with the difference of expediency. Now, as the expediency of submission is not the same, so the rights cannot be the same. In this way alone the subjects of different states possess different civil rights. The duty of obedience is defined by different boundaries; and the point of resistance is placed at different parts of the scale of suffering. Nor is there any need to apply the principle of the social compact, as some have done, to explain the ground of such difference in civil rights, or to enforce the duty of submission.

7. That, as the interest of the whole society is binding on every part of it, no individual can pursue his private advantage to the injury of the community; nor may any portion of the empire concert measures for their own benefit to the detriment of the sum of public prosperity. In the contest between England and the United States, an American, to justify resistance, ought to have satisfied himself, not only that the colonies would be benefited by their independence, but that America would gain more, than England could lose by the separation; or, at any rate, that the whole gain to both countries would be greater by the future freedom of the colo-

77 What inference do we draw from it in the sixth place? What reasons for this?

78 What effect has the rule of expediency upon the rights of subjects? What follows from this?

79 What principle do we found upon it in the seventh place?

80 How does Dr. Paley think that Americans ought to have reasoned before they declared their independence of Great Britain?



nies, than the whole loss to both by their continued submission. The same principle of calculation, by which the balance of advantages and disadvantages is ascertained, may be applied to all similar cases. And the conclusion arrived at will be, that in a competition of interests between a small colony and the mother country, the less must be sacrificed to the greater. But in proportion as the dependency increases its power, it has a right, founded on expediency, to have its interests viewed differently; and to claim terms of confederation equal to its importance in the general scale, and, if refused, to assert its independence.

CHAP. IV.—DUTY OF CIVIL OBEDIENCE, AS STATED IN THE  
CHRISTIAN SCRIPTURES.

As regards the extent of our civil rights and obligations, Christianity leaves man where it found him; that is, it affords neither argument nor objection to any conclusions upon the subject, that may be deduced from the law of nature. The only passages of the New Testament connected with this subject are in the Epistles of St. Paul and St. Peter.

“Let every soul be subject unto the higher powers: for there is no power but of God; the powers that be, are ordained of God. Whosoever, therefore, resisteth the power, resisteth the ordinance of God; and they that resist, shall receive to themselves damnation. For, rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same; for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience' sake. For, for this cause, pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues; tribute to whom tribute is due; custom to whom custom, fear to whom fear, honor to whom honor,” Rom. xxii. 1—7.

“Submit yourselves to every ordinance of man, for the

81 What is his general conclusion as regards the rights of colonies?

82 What effect has Christianity upon our civil rights and duties?

83 What are the only two passages that have any bearing upon this subject? Recite them.



Lord's sake ; whether it be to the king, as supreme ; or unto governors, as unto them that are sent by him for the punishment of evil-doers, and for the praise of them that do well. For so is the will of God, that with well-doing ye may put to silence the ignorance of foolish men ; as free, and not using your liberty for a cloak of maliciousness, but as the servants of God." 1 Pet. ii. 13—18.

These passages have usually been adduced as proofs of the language of Scripture in favor of unlimited passive obedience. But before such an interpretation can be admitted, it is necessary to examine the subject more at length.

Upon the subject of civil obedience, there are two questions ; the first, whether we are morally bound to obey government at all ; the second, to what extent ought obedience to be carried. This being the case, it is plain that if expressions which relate to one of these questions, be applied to the other, there is great danger of perverting their intentions. This distinction should be borne in mind, when interpreting the passages which we have quoted.

They will be found to inculcate rather the *duty* of obedience than to describe the *extent* of it : for while they enforce the obligation by the proper sanctions of Christianity, they neither enlarge nor contract the limits by which it is bounded. In like manner, the same apostles enjoin servants to be subject to their masters, children to obey their parents in all things, and wives to submit themselves unto their husbands ; yet no one doubts that the commands of masters, parents, and husbands, are often so immoderate, unjust, and inconsistent with other obligations, that they both may and ought to be resisted.

Hence, we are at liberty to infer, that unlimited passive civil obedience may lead, in some cases, to the imposition of commands equally immoderate and inconsistent with other obligations ; and that a resistance in like manner would be justifiable on the part of a people exposed to such commands.

84 What have these passages been said to favor ?

85 What two questions must we examine in order to form an opinion on this subject ?

86 What is the object in dividing the subject into these two divisions ?

87 To which division should we suppose the Scriptures under consideration will apply ?

88 What other duties are enjoined by Scripture in the same manner ?

89 And what do we infer from that fact ?

But many commentators have supposed that the first Christians privately cherished an opinion, that their conversion to Christianity entitled them to an exemption from the civil authority of the Roman power. And therefore to refute this error, St. Paul teaches the Christian convert to obey the magistrate "for the Lord's sake;"—"not only for wrath, but for conscience' sake;"—"that there is no power but of God:" that the powers that are in possession of the actual and necessary authority of civil government, "are ordained of God," and, consequently, entitled to receive obedience from those who profess themselves the peculiar servants of God. St. Peter, likewise, briefly describing the office of "civil governors, the punishment of evil-doers, and the praise of them that do well," justly infers, from the use of government, the duty of subjection; which duty, being as extensive as the reason on which it is founded, belongs to Christians no less than to the heathen members of the community. If, then, the two apostles wrote with a view to this particular question, their words cannot fairly be transferred to a question totally different; nor can the arguments which were used in teaching a primitive convert, who disputed the jurisdiction of the Roman government over a disciple of Christianity, be applied to him who acknowledges the general authority of the state over all its subjects, but doubts whether that authority be not, in some important branch of it, so ill constituted or abused, as to warrant the endeavors of the people to bring about a reformation by force. It is true, that neither the Scriptures, nor any history of the early ages of the church, furnish direct proof of the existence of such disaffected sentiments amongst the primitive converts. They, however, supply some circumstances, which render probable the opinion, that extravagant notions of the political rights of Christians were entertained by many early proselytes to the religion. From the question proposed to Christ,

90 What was probable the reason for St. Paul's giving any instructions on this subject?

91 What would follow if the two apostles were shown to have written with a view to this particular question?

92 From what application would it debar the argument?

93 Are we certain that the primitive Christians had the opinions which were just now ascribed to them?

94 What circumstances render it probable?

“Is it lawful to give tribute unto Cæsar?” it may be presumed, that doubts had been started by the Jews concerning the lawfulness of submission to the Roman yoke; and the accounts delivered by Josephus, of various insurrections of the Jews, excited on this pretence, confirm this presumption. Now, as the Christians were at first taken chiefly from the Jews, it is not to be wondered at, that a tenet, so flattering to the self-importance of those who embraced it, should have been communicated to the new institution. Again, the teachers of Christianity were wont to extol, amongst other privileges which their religion conferred on its professors, the “liberty, in which Christ had made them free.” This liberty, by which was merely intended a deliverance from the dominion of sinful passions, the superstition of the Gentile idolatry, and the encumbered ritual of the Jewish dispensation, might be interpreted by some to signify an emancipation from all restraint, imposed by any authority merely human. At least, they might be represented by their enemies as maintaining notions of this dangerous tendency. To some error or calumny of this kind, the words of St. Peter seem to allude:—“For so is the will of God, that with well-doing ye may put to silence the ignorance of foolish men: as free, and not using your liberty for a cloak of maliciousness, (that is, sedition,) but as the servants of God.”

After so full an account of what seems to be the general design and doctrine of these much-agitated passages, little need be added in explanation of particular clauses. St. Paul has said, “Whosoever resisteth the power, resisteth the ordinance of God.” This has been considered as an authority for the most superstitious views of the regal character. But surely by such opinions, truth has been sacrificed to adulation; for, 1. The expression is just as applicable to the elective magistrates of a pure republic as to an absolute hereditary monarch; and, 2. It is not the supreme magistrate individually; but the officer, be he high or low, to whom

95 What was extolled by the first teachers of Christianity?

96 How might this have been interpreted?

97 What passage renders this probable?

98 What has been said of the passage, “resisteth the ordinance of God?”

99 What two reasons prove this view to be wrong?

obedience is due. The *divine* right of kings is, like the divine right of constables, a right ratified by the Divine approbation, so long as obedience to their authority appears to be conducive to the common welfare. Princes are ordained of God only so far as his will sanctions every law of society which promotes the happiness of man; and thus, without any repugnancy to the words of St. Paul, they are by St. Peter denominated the "ordinance of man."

## CHAP. V.—CIVIL LIBERTY.

Civil liberty is the not being restrained by any law, but what conduces in a greater degree to the public welfare.

To do what we will is natural liberty; to do what we will, consistently with the interests of the community, is civil liberty, and the only liberty desirable in civil society.

To do what one likes is certainly pleasant; but if all could indulge in this pleasure, (and if one may, all may;) the liberty of each person would receive so many checks and obstacles from the liberty of others, that it would be much less than if all together with himself were subjected to equal laws.

The boasted liberty of a state of nature is found only in solitude. In a state of society the liberty of each is increased by the restraint thrown on all; because each gains more from the limitation of the freedom of others, than he loses from the diminution of his own. Natural liberty is like the right of common upon a waste; civil liberty is like the right of the enjoyment of an enclosure.

Since, then, the *greater happiness of the many* is the only ground for restraining the liberty of the individual, and as restraint is a positive evil; it will be necessary for the legislature, before it inflicts that evil, to show that the private injury will be outweighed by some public good. And, if no such good is likely to result, the restraint ought not to be

100 What is the *divine right* of kings?

101 In what sense are princes ordained of God?

102 What is civil liberty?

103 How does civil liberty differ from natural liberty?

104 Is it expedient that we should always do as we please?

105 Where is found the liberty of the state of nature?

106 What effect has restraint on a community in a state of society?

107 How is this proved and illustrated?

108 What duty of the legislature follows from the preceding remarks?



imposed; or, if it has been imposed, it ought immediately to be withdrawn as soon as it is found that no actual good has been the result. Nor is it necessary that the subject should prove that there has evil actually resulted from it.

And also, because the amount of actual liberty is greater as the number and severity of restrictions either useless or partially useful are less, and *vice versâ*; it follows, that some liberty is possessed by every people; perfect liberty, by none. And that, as it may be enjoyed under every form of government, and is never entirely lost under any; all those phrases about a free people, or a nation of slaves, are intelligible only when taken in a comparative sense.

Hence, also, we are enabled to apprehend the distinction between *personal* and *civil* liberty. A citizen of the freest republic in the world may be imprisoned for his crimes; and, though his personal freedom be restrained by bolts and fetters, yet so long as his confinement is the effect of a beneficial public law, his civil liberty is not invaded. If, then, the coercion of a *prison* be compatible with a state of civil freedom, there must be the same compatibility in those more moderate constraints which government imposes on the will of the individual. It is not the rigor, but the inexpediency, of laws, which makes the execution of them tyrannical.

There is another idea of civil liberty, which though neither so simple nor so accurate as the former, agrees better with the common signification affixed to the term. This idea makes liberty to consist, not merely in an actual exemption from the constraint of useless and noxious laws, but in the *security from the danger* of having such hereafter imposed or exercised. Thus, in England, the act of parliament, in the reign of Henry VIII., which gave to the king's proclamation the force of law, has properly been called a complete surrender of the liberty of the nation; and would have been equally so, even if no proclamation had been issued in pursuance of these new powers. The *security* was gone. Were it probable that the interests of the people would be as

109 What facts follow from this account?

110 Explain the difference between personal and civil liberty.

111 What is justified by the example here cited?

112 What is tyranny in government?

113 What is the more general idea of civil liberty?

114 Give an example.

115 What would render despotism a free government?



studiously consulted by a despotic prince as by a popular assembly, absolute despotism would be as free as the purest democracy.

Various as appear to be the definitions given of civil liberty, yet do they in fact all agree; for, as they all relate only to the different *guards* by which civil liberty is to be protected, they only present different views of an object really one and the same.

Thus, liberty is defined by one writer to consist in the right of the subject to be governed by no laws but those he has actually or virtually assented to; another places liberty in the separation of the legislative and executive powers of the state; a third, in being governed by laws, known, positive, and inflexible; a fourth, in taxation and representation being co-existent; a fifth, in the freedom and purity of election; and a sixth, in the control of the people over the military.

To these and similar definitions, however, it may fairly be objected, that they do not so much define civil liberty, as describe the preservatives of it.

Truth cannot be destroyed by an incorrect definition, but propriety may be offended at it; hence, any definition ought to be rejected, which makes essential to the idea of civil freedom, what is unattainable in reality; because it gives rise to expectations that cannot be gratified, and to complaints that no government can remove.

That state is, in fact, the most free, where the best provision is made for the ready enactment of salutary laws.

#### CHAP. VI.—DIFFERENT FORMS OF GOVERNMENT.

[“From the preceding chapters, we learn, that government of some sort springs out of society; and that society cannot exist without it. It is the only security against foreign foes, and against the wrongs which the members of a society may do against each other; and the only agency by which jus-

116 Is there actually any disagreement in the various definitions of civil liberty? Why?

117 Mention six different definitions.

118 What fault have they all?

119 What definitions of it should we reject? Why?

120 Where in fact is the most liberty?

121 What have we learned from the preceding chapters?

122 What is the use of civil government?

tice can be administered.”—*Sullivan’s Political Class Book.*]

The person, or assembly, in whom the government is invested, is called the *sovereign*, or the *supreme power* of the state; and, from its power to make laws, it is called also the *legislature* of the state.

A government receives its denomination from the form of its legislature.

Political writers enumerate three principal forms of government, of which, taken singly or in combination, all governments are composed. These forms are,

1. *Despotism*, or *absolute monarchy*, where the legislature is in a single person.

2. An *aristocracy*, where the legislature is in a select assembly, the members of which either fill up by election the vacancies in their own body, or succeed to their places in it by inheritance, tenure of certain lands, or in respect of some official right of qualification.

3. A *republic*, or *democracy*, where the people at large, either collectively or by representation, constitute the legislature.

[“Montesquieu gives a better division of the simple forms, proceeding upon a more extensive view of human affairs, and juster notions of the nature and principles of law. That great author divides the simple forms of government into *Despotism*, or government by one man whose will is the law; *Monarchy*, or government by one man according to law; *Republic*, which comprehends aristocracy and democracy.”\*]

[“A *despotism*, is that form of government ‘in which a *simple individual*, without any law, governs according to his own will and caprice.’ An example of this kind of government may be found in Turkey, where the Sultan exercises all

123 Who or what is called the sovereign of the state?

124 What else is it called? Why?

125 From what does a government receive its denomination?

126 How many forms of government are there?

127 Define despotism.

128 What is an aristocracy?

129 What is a republic?

130 What is Montesquieu’s division of the forms of government?

131 Define despotism; and give an example of it.

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\* Beattie’s Moral Philosophy, part iii. chap. ii. sect. i.

the powers of sovereignty, with respect to the general administration of public affairs; but, even there he is limited by certain customs and rules, as it respects private justice.

“A *monarchy*, is that form of government in which a *single individual governs*; but according to *established laws*. The governments of Austria, Prussia, France, and England, are examples of this form of government. The *limitations* placed upon the monarch are, however, very *different in degree*: thus, the power of the Prussian monarch is very great, while that of the king of England is so small as scarcely to be felt. The latter acts through his *ministers*, who are held responsible to the *representatives of the people*, and can maintain their power only so long as they can satisfy public opinion.

“A *republic*, is either an aristocracy or a democracy. An *aristocracy*, is when the sovereign power is in the hands of only a *part of the people*. This word is of Greek derivation. It is compounded of the adjective *aristos*, signifying *best* or *wisest*, and *kratos*, signifying *power* or *strength*; the whole word signifies that form of government in which a few of the wisest and best govern. An example of this kind of republics may be found in Venice, Genoa, and the Dutch States, in all of which a *part* of the people, either absolutely or limitedly, exercised the authority.

“A *democracy*, is when the sovereign power is in the hands of the *whole people*. The term democracy is derived directly from the Greek word *demos*, signifying *the people*. Athens was formerly an example of this kind of republic, and was governed by primary *assemblies of the people*, a mode which could be adopted only where the people were chiefly citizens, and inhabitants of one capital city.”—*Mansfield's Political Grammar*.]

The *advantages of monarchy*, are decision, secrecy, and despatch, and the military strength which results from these qualities; the preventing by a known rule of succession all competition among the higher orders for the supreme power;

132 Define a monarchy, and give examples of it.

133 Are the limitations of the monarchical power the same in all kingdoms and empires?

134 How many kinds of republics are there?

135 What is an aristocracy; and where are examples of it?

136 Define democracy; and give examples of it.

137 What are the advantages of monarchy?

and the ready suppression of movements arising from popular excitement.

The mischiefs, or rather the *dangers of monarchy*, are tyranny, expense, exaction, military domination; unnecessary wars, waged to gratify the passions of an individual; risk concerning the character of the reigning prince; ignorance in the governors of the interests of the people; a deficiency of salutary regulations; and insecurity of person and property.

The separate *advantage of an aristocracy*, consists in the experience which a permanent council is expected to possess; and in the education of its members being directed with a view to the stations, which as heirs of rulers they are destined to occupy.

The *mischiefs of an aristocracy* are in the dissensions of the rulers, who, from the want of a common superior, are kept under no control; in the oppression of the lower orders by the privileges of the higher; and in laws made for the interest of the law-maker alone.

The *advantages of a democracy*, are liberty, or exemption from needless restrictions; equal laws; regulations adapted to the circumstances of the people; frugality; aversion to war; and the opportunities afforded to all men of bringing their abilities into notice for the service of the commonwealth.

The *evils of a democracy*, are tumults, through the attempts of powerful citizens to gain the lead; the difficulty of propounding questions of state to the discussion of the people; the disclosure of public counsels, and the delay of designs, retarded by the necessity of obtaining the consent of numbers.

A *mixed government* is composed of two or more of the simple forms of government; and in whatever proportion, each form enters into the constitution of such mixed government, in the same proportion are its benefits to be maintained and cultivated, and its dangers to be provided against. For instance, a government may possess, in its regal part,

138 What are the mischiefs or dangers of monarchy?

139 What are the advantages of aristocracy?

140 What are the mischiefs of aristocracy?

141 What are the advantages of democracy?

142 What are the evils of a democracy?

143 What is a mixed government? What is said of it?



the secrecy and despatch of a monarchy ; and in its popular part, the frugality and aversion to war of democracy. These advantages should be retained ; while on the other hand, there should be a vigilant watch against the monarchical properties of expense, military domination, &c. ; and the democratic concomitants of tumults, and needless delays. A mixed government is however sometimes exposed to an evil, from which the others are free ; thus, corruption of principle is sure to insinuate itself into a constitution that divides the supreme power between an executive magistrate and a popular council ; though it does not belong to the separate existence of either.

An *hereditary monarchy* is universally to be preferred to an *elective* one, as shown by the experience of past and present ages. A crown is too splendid a prize to be conferred on merit ; as all consideration of the qualities of the competitors, is excluded by the passions or interest of the electors. Nothing is gained by a popular choice, worth the tumults which inseparably attend the election of a king. Add to this, that a king who owes his elevation to the event of a contest either martial or electoral, will be apt to regard one part of his subjects as friends, and the other as foes. Besides, as plans of national reform are seldom brought to maturity in a single reign, a nation cannot attain the prosperity of which it is capable, unless such plans be continued through a succession of reigns. Now, as the probability of such continuance is greater where each prince succeeds to the pursuits and system of his ancestor than if the crown, at every change, devolves on a stranger, whose first care will commonly be to pull down what his predecessor had built up ; the probability of such national improvement is increased, and the advantages of an hereditary monarchy are more fully felt.

[On the other hand, it is said by Mr. Rawle, “The whole power which is conceded to an hereditary monarch, may be vested by a democratic republic in an elective magistrate,

144 Illustrate the advantages of a mixed government.

145 In such a case, what evils are to be guarded against ?

146 Is there any evil peculiar to mixed governments ?

147 Which is to be preferred, an hereditary or elective monarchy ? Why ? Is nothing gained ?

148 What reasons as it regards partizans ? And national reform ?

149 Do any contradict this opinion ?



and all the benefits derived from it, may be enjoyed without the dangers attending it.

“If an hereditary monarch abuses his power, the relief of the people is by insurrection; and thus between the ambition of princes on the one side, and the sense of injury on the other, the peace of the country is constantly endangered. If the monarch is elected for life, a young aspiring prince may continue the grievances of the state for a long time; and unless there is an express power of deposing him, the choice of another in his place would involve the whole body in tumult and disorder. But the power of choosing another supreme magistrate at the end of a reasonable time, obviates these objections.”—*View of the Constitution.*]

*Aristocracies* are of two kinds: 1. Where the members of the nobility are invested with power in their collective capacity alone; but enjoy as individuals no authority or privilege beyond the rest of the community; as in the case of Venice: 2. Where the nobles are severally invested with great *personal* power and immunities, and where the power of the senate is little more than the aggregated power of the individuals who compose it; as it was in the case of Poland. Of these two forms of government, the first is more tolerable than the last: for, though the members of a senate should be profligate enough, individually, to abuse the authority of their stations in the prosecution of private designs; yet, as all have not the same end to gain, it would be difficult to obtain the consent of a majority to any act of individual oppression. Or, if the will were the same, the power is more confined; for whether the tyranny reside in a single person or in a senate convened, the oppression of that one tyrant cannot be exercised so well at many places, and at the same time, as it may be carried on where a numerous nobility lord it over their respective vassals and dependants. Of all species of tyranny, this is the most odious; for by it private life is more harassed than by the most vexatious laws. It is even more tormenting than the will of an arbi-

150 What are Mr. Rawle's remarks upon this subject?

151 How many kinds of aristocracy are there?

152 Describe the first kind; and give examples.

153 Describe the second kind; and give an example.

154 Which form is the best? Why?

155 Which is the most odious species of tyranny? Why?

trary monarch ; because from his injustice the greatest part of his subjects are sheltered by their obscurity.

Europe exhibits more than one example, where the people, provoked by the exactions of the nobles, have joined with the prince in the overthrow of the aristocracy, deliberately preferring the despotism of one to that of many. About the middle of the 17th century, the commons of Denmark, weary of the continued oppressions, and exasperated by the recent insults of the nobility, formally offered unlimited power to the king. The revolution in Sweden was brought about with the acquiescence, if not assistance, of the people ; from the prospect it afforded of deliverance from the old tyranny of their nobles. In England, the people beheld the depression of the barons, under the house of Tudor, with satisfaction, although they saw the crown acquired thereby a power which the constitution as established at that time was not likely to limit. The lesson taught by such events is, that a mixed government, which admits of a patrician order, ought to circumscribe the privileges of the nobility if it wishes its own preservation : for nothing so alienates the minds of the people, or prepares them for the practices of an enterprising prince or a factious demagogue, as the perception of abuses resulting from the existence of separate immunities.

Amongst the inferior, but not inconsiderable advantages of a *democracy*, or of a constitution where the people share in the legislation, the following should be reckoned :—

1. The direction which it gives to the education and pursuits of the superior orders of the community. The share which this has in forming the national character is very important. In countries where the gentry are excluded from all concern in the government, the only road to advancement is the profession of arms. But miserable as that country must be, which constantly employs in military service a great proportion of any order of its subjects ; the individuals of the profession are not less so : for, from the want of higher objects, they fall into habits of animal gratification, or devote themselves to the futile business and decorations of a court. But, where the effective portion of civil power

156 What political convulsions have been common in Europe ?

157 Mention some instances.

158 What are we taught by these examples ? Why ?

159 Among the inferior advantages of democracy, what is the first ?

is possessed by a popular assembly, more serious pursuits, with purer morals and a more intellectual character, will engage the public esteem ; and faculties which qualify men for deliberation, and are the fruits of sober habits and continued application, will be excited by the most spirit-stirring of inducements, the desire of political importance.

2. Popular elections procure to the common people courtesy from their superiors. The contemptuous and overbearing insolence of the higher orders is greatly mitigated, where the people have something to give ; and the assiduity with which their favor is then sought, generates habits of condescension and respect. And as life is more embittered by affronts than by injuries, whatever tends to procure civility and to lessen the evils of inequality, deserves to be accounted among the most generous institutions of social life.

3. The satisfaction which the people in free governments derive from the knowledge and discussion of public measures. Such subjects excite just enough of interest to afford a moderate engagement to the thoughts, without rising to any painful degree of anxiety ; and thus reach the end and aim of all those amusements, which compose so much of the business of life : and as these topics excite universal curiosity, and are such as almost every man wishes to deliver his opinion about, they greatly promote, and even improve conversation, by supplying a substitute for amusements less innocent. Now, though the jealousy of despotic governments excludes all this, the loss, you say, is trifling, except to village politicians : but nothing is a trifle, which ministers to the harmless gratification of the multitude.

It has been said that a republic is suited only to a small state ; for unless all the people of a large empire share in the representation, the government is not to them a republic ; that elections, where the constituents are numerous and widely dispersed, are managed by a few situated near the place of election ; because each voter considering his single

160 What beneficial effect upon national character results from this advantage ?

161 What is the second advantage ?

162 Why is this advantage of any importance ?

163 What is the third advantage ?


164 Why has this a beneficial influence ?

165 What has been said by some concerning an extensive republic ?

166 What five reasons have they given for these opinions ?

suffrage as unimportant, cares not to oppose the influence of such few; that if the representation be contracted enough to admit of orderly debate, the interest of the constituent becomes too little, of the representative too great; that it is difficult to maintain any connection between them; that he who represents 20,000 is necessarily a stranger to the great body of his electors; and that when a representative, so unknown to his constituents, finds the treasures and honors of the state at the disposal of a few, and himself one of the few, he will scarcely prefer his public duty to personal aggrandisement, which the value of his vote will always purchase; and, lastly, as all appeal to the people is precluded by their own want of unanimity, the divisions and combinations of the representatives will be equally dangerous. But much of the weight of these objections is taken off by the contrivance of a federal republic; which, leaving to each smaller state its internal legislation, reserves to a convention of all the united states the adjustment of individual claims, together with the possession of the plenary powers usually granted to other governments, on points connected with the welfare of the whole community in their domestic and foreign relations. How far such a constitution is able to unite the liberty of a small commonwealth with the safety of a large empire; or whether amongst co-ordinate powers, dissensions are not likely to arise, which, for want of a common superior, will proceed to fatal extremities; are questions on which the records of the past are silent; but are to be decided by the history of this country, where the experiment is now under trial on a large scale.

## CHAP. VII.—FIRST PRINCIPLES OF POLITICAL CONSTITUTIONS.

 This and five succeeding chapters are inserted instead of Paley's chapter on the British Constitution.

[The principles on which a government is formed and conducted, compose what is called its *constitution*.\*

167 What is an answer to these objections?

168 What is the genius of that form of government?

169 Can we judge of its effects from former governments?

170 How are they to be decided?

171 What is the constitution of a government?

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\* Rawle on the Constitution.



This may be made up of governmental acts, judicial decisions, and immemorial usages, as in the countries of the old world;\* or it may be a written code, agreed upon and adopted by those who are to be affected by it, as is the case in this country.†

“It is not *necessary* that a constitution should be in writing; but the *superior advantages* of one reduced to writing, over those which rest on traditionary information, or which are to be collected from the acts and proceedings of the government it self, are great and manifest. A dependance on the latter is indeed destructive of one main object of a constitution, which is to check and restrain the governors. If the people can only refer to the acts and proceedings of the government, to ascertain their own rights, it is obvious, that as every such act may introduce a new principle, there can be no stability in the government. The order of things is inverted. What ought to be the inferior is placed above that which should be the superior; and the legislature is enabled to alter the constitution at its pleasure.

“This is admitted by English jurists to be the case in respect to their own constitution, which in all its vital parts may be changed by an act of parliament; that is the king, lords, and commons, may, if they think proper, abrogate and repeal any existing laws, and pass any new laws in direct opposition to that which the people contemplate and revere as their ancient constitution. No such laws can be resisted or disobeyed by the subject, nor declared void by their courts of justice as unconstitutional. A *written* constitution which may be enforced by the judges and appealed to by the people, is therefore most conducive to the happiness and safety of the community.”‡

As governments purely despotic, are conducted by no settled principles, but by the mere will of the sovereign, they are not said to have a constitution.§

172 Of what is it composed ?

173 Is it necessary that it should be in writing ?

174 Would a written one be preferable ?

175 What would be consequent to a dependance upon the latter ?  
Why is that the fact ?

176 Is this the case in any government ?

177 To what extent is the power of the British legislature ?

178 Have despotic governments any constitution ?

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\* Paley.      † Sullivan's Pol. Class-book.      ‡ Rawle.      § Ibid.



The constitution of the United States, is probably the first code of governmental principles, that has received, previous to its force, the sanction of those who were to be ruled by it. And, in comparison with all others, as has been said by Mr. Rawle, "The history of man does not present a more illustrious monument of human invention, sound political principles, and judicious combinations."

We are therefore well authorized to make it the foundation of what remarks we have to offer upon the principles of government. And accordingly we shall endeavor to exemplify our political views, by referring to that constitution so wisely adapted to the promotion of the common welfare and happiness of its subjects.

But on this account our description of the organization and duties of a government must be preceded by a few preliminary remarks. And,

1. All government should hold its existence only by consent of the main body of the people. In the declaration of our independence, it is asserted that "governments derive their just powers from the consent of the governed;" and "it is the right of the people *to alter or abolish*" them, whenever they suppose that their own safety or happiness depends upon such operations. Mr. Hamilton, in the *Federalist*,\* says, "It has not a little contributed to the infirmities of the existing federal system, [*the old confederation*,] that it never had a ratification by the *people*.—The fabric of American empire ought to rest on the solid basis of the *consent of the people*. The streams of national power ought to flow immediately from that pure original fountain of all legitimate authority." In accordance with this principle, the preamble of our constitution begins with, "We the people of the United States;" and agreeably to the recommendation of the convention by which it was formed, it was ratified by "conventions of delegates, chosen in each state by the people

179 What is said of the constitution of the United States?

180 How does it compare with others as respects its merits?

181 What advantage will be taken from that in this treatise?

182 What will be necessary on this account?

183 What is our first preliminary remark?

184 Has this been declared by our own country?

185 What other authority have we for this principle?

186 Does the constitution of the United States recognize it?

thereof," for the sole purpose of expressing their will on this one subject. "All the ratifications commence with, We the delegates of *the people thereof*; and all terminate by making the ratifications in the name of *their constituents the people*."\* Our constitution may therefore be said, not merely to *exist* by consent of the people, but to be *formed* by them in their sovereign capacity.

II. Every government should be fundamentally democratic; that is, the *sovereign power* should remain in the hands of the *whole people*. Mr. Dymond, an English writer, remarks, "It will not perhaps be disputed, that if the world were wise and good, the best form of government would be that of democracy in a very simple state. There is, therefore, reason to suppose that other forms of government may gradually lapse away, as the condition of mankind, moral and intellectual, is improved. The public judgment is not only the proper, but almost the *necessary* eventual measure of political institutions. And it appears evident that as that judgment becomes enlightened, it will be exercised; and that, as it is exercised, it will prevail. But, if public opinion does govern, it must govern by some agency through which public opinion is expressed; and this expression can in no way so naturally be effected as by some modification of *popular authority*."† The people of the United States believe that their moral and intellectual character is adapted to popular authority; and they accordingly claim it in the constitutions both of the general and of the state governments.

This self-government is conducted in several ways. In the first place, as inhabitants of townships, they may meet in one assembly, and transact any public business which they have not delegated by the constitution to civil officers. The extent of powers conferred upon magistrates, is greater in

187 With what words commence the ratifications of it?

188 What then may be said of our constitution?

189 What is the second preliminary remark?

190 What are Mr. Dymond's remarks upon this doctrine?

191 By what does he say that public institutions should be regulated?

192 In what manner must public opinion govern?

193 By whom is this popular authority claimed?

194 What is the first method in which this political self-government operates?

\* Mansfield's Pol. Gramm. § 461.

† Dymond's Essay, iii. ch. 6.

some states than in others. Where it is most retained by the people, the qualified voters dispose of township property, make assessments upon themselves for all money necessary for town purposes, make enactments relative to their public roads and buildings, appropriate a maintenance for the poor, and decide on many other things concerning the common welfare. In some places, all or nearly all of these prerogatives are, on account of the difficulty of acting in one assembly, transferred to a set of men, called *town officers*, chosen for that purpose by the people themselves.

In the next place, as citizens of a state, (the territory of which is too large for one meeting of the people,) they choose, with one or two exceptions, all their legislative and executive officers. And whenever they see fit, "they have a right, in a peaceable manner, to assemble together for their common good; and to apply to those invested with the powers of government, for redress of grievances, or other purposes, by petition, address, or remonstrance."\*

In the next place, as members of the nation, they are entitled by the constitution to choose, 1. The members of the house of representatives by their own votes;† 2. The senate through the medium of the state legislatures;‡ and 3. The president by electors "appointed in such manner as the legislature may direct."§ So that in fact, both the legislative and executive branches of the government are chosen by the whole people. And moreover, if either of these branches deviates from the will of its constituents, the people at the next election have the power of supplying it with a new set of individuals, who will be more likely to act according to their will.

III. Every democratic government should be a representative government. "It has been reserved for modern times

195 To what extent is the government of townships invested in the magistrates?

196 What is the next method of political self-government?

197 What is the next method of its operation?

198 What is the effect of these privileges?

199 Suppose that the rulers, when chosen, do not conform to the wishes of the majority of the people?

200 What is the third preliminary remark?

\* Constitution of Pennsylvania.

† Idem. art. i. sect. 3.

† U. S. Constitution, art. i. sect. 1.

§ Idem. art. ii. sect. 1.

and for this side of the Atlantic, fully to appreciate and soundly to apply the principle of representation in government. The advantages which occasionally arise to an individual, of being able to commit his cares and concerns to another, who in the exercise of such authority is considered as the principal himself, are elevated and ennobled by being transferred to the concerns of an entire community. Without the representative principle one of two consequences must follow; either the whole body must be assembled and act together, or a few, who may have possessed themselves of sufficient force, will undertake to dictate and give laws to the whole. But a wise people sees and dreads its own danger in large assemblies. Experience tells them that they cannot trust themselves when thus assembled; that sudden bursts of feeling are likely to predominate over their own judgment; that facts and causes are often misrepresented or misunderstood, and that the deliberate judgment which ought to be solely exercised, is overpowered by unaccountable excitement and precipitate impulse. It was forcibly said in reference to the popular assemblies of Athens, that if every Athenian were a Socrates, still every Athenian assembly would be a mob.

“A people sagacious enough to discover this imperfection in itself, remedies the danger by selecting a suitable number to act for it upon full consideration and with due caution; and while it authorizes them to express what are to be considered its own sentiments, it gives to that expression the same effect as if it proceeded immediately from itself.”\*

As we have already seen, the constitutions both of the state governments and of the nation, act entirely on the representative principle. The people choose the state executive and legislature to act for them and in their name; and they also choose, in part directly, and in part indirectly, the president and the congress of the United States to transact for them the concerns of the nation.

201 Has this principle been always well understood?

202 How must a democratic government be carried on if not by representatives?

203 Would it be safe for the whole body of the people to govern?

204 What reasons are against it?

205 How is the danger remedied?

206 Has the representative principle been adopted with us?

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\* Rawle on the Constitution.



iv. Whenever a republic occupies a large tract of country, it is advisable that it should be divided into smaller states, which should be sovereign in a municipal point of view, and which should hold a federative relation to each other in their national or external affairs. It is by municipal laws that individuals are most affected; and therefore it is highly requisite that they should be enacted by those who are thoroughly acquainted with the wants and feelings of the governed. This could not be the case, were there only a legislature for the whole nation. For in order to make that body small enough for purposes of business, each one must represent a large tract of country; and of course cannot be supposed to know the circumstances of many local affairs. Nor can he have an acquaintance with all his constituents, by which alone he can be enabled to enter with interest into their feelings.

Now although our state governments were not a subdivision of the nation, (and of course the reasons we have just given were not thought of in their origination,) yet, it has been found by experience, that their separate independence, as long as they preserve the federal union, tends most happily to the benefits we have been speaking of. The continuance of this state of things is rendered certain by the 10th article of the amendments to the constitution of the United States, which says, "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Now the constitution has not invested congress with the power of making any laws which do not relate to national affairs, neither has it prohibited the states to manage the internal concerns of their respective communities. Hence, each state, by its own constitution, authorizes its legislature to enact, and enforce by proper judicial courts, all municipal and local laws which concern the rights of person and property. And to preserve the national government, it is stated

207 What is the fourth preliminary remark?

208 Why should these states be sovereign in municipal affairs?

209 Why cannot the members of a national legislature enter into the wants and feelings of the people?

210 Was our government organized to conform to this principle?

211 Will this posture of affairs remain?

212 What guaranty is there that the states shall exercise the municipal power?



in the 10th section of the constitution of the United States, that, "no state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal;"—"nor without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws;"—"nor lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Thus we have shown that a legitimate and beneficial government should be by consent of the governed; that it should be democratic and representative; and that, where the extent of territory is great, its municipal laws, for the purpose of a more perfect adaptation, should be enacted and enforced by local authorities. And we have shown also that our own American institutions are well adapted to these fundamental principles of political rectitude. We will now proceed to exhibit what should be the organization, the functions, and the restrictions of a civil government designed for a free and enlightened people.

And first, we state, as the most essential requisite to the government of a free people, that its authority should be divided into three great commensurate departments, which should be intrusted to different individuals. These branches are the legislative, the executive, and the judicial. With the legislative is vested the power of making laws; with the executive, the business of putting them into operation; and with the judicial, the duty of expounding them, and deciding their proper application. Mr. Madison, in speaking of this division, says, "No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty."\*

213 What provision is there that they will not exercise national powers?

214 Recapitulate the principles we have been sustaining.

215 What have we shown concerning them?

216 What is the most essential requisite to a free government?

217 What powers are invested in each of these?

218 Is this principle generally acceded to?

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\* Federalist, No. 47.

And the following reasons for it are given by Montesquieu : “ When the legislative and executive powers are united in the same person or body, there can be no liberty ; because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws, to *execute* them in a tyrannical manner.” Again : “ Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control ; for *the judge* would then be *the legislator*,” and knowing the parties and interests that would be affected by his determinations, he might make particular laws for particular cases ; and be influenced in all his acts by his partialities rather than by the fixed rules of justice. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*.” Consequently, where the three powers are not properly separated, the will of those who govern must become despotic ; and it is wholly immaterial to the subject, whether he suffers under the despotism of one magistrate, or the tyranny of an assembly.

In consonance with this great principle of precaution in favor of liberty, the constitution of the United States, as well as those of the several states, make provision for these separate and distinct branches of government. In the constitution of the United States, we find that the first article vests all legislative powers therein granted, “ in a Congress of the United States, which shall consist of a Senate and House of Representatives ;” the second article vests the executive power “ in a President ;” and by the third, the judicial power is “ vested in one Supreme Court, and in such inferior courts as the Congress may from time to time order and establish.” And it appears to be the intention of the constitution that no individual connected with either of these departments should be eligible to another ; for it declares in the sixth section of the first article, that “ no person holding any

219 Supposing the legislative and executive powers were united ?

220 What if the legislative and judicial powers were united ?

221 What if the same person were the judge and the executive ?

222 What follows from the preceding remarks ?

223 Is this principle acknowledged in our institutions ?

224 What is said of the first article in the constitution of the United States ?

225 What is said of the second article ? The third ?

226 What farther appears to be the intent of the constitution ?

227 By what article is it shown ; and what follows from that article ?

office under the United States shall be a member of either house during his continuance in office." And by consequence, if any congressman should accept of an office in the executive department or in the judiciary, he forfeits his seat in the legislature. In several of the states, it is expressly stipulated by constitution, that "any person shall not exercise powers in more than one of them at the same time."

But while it is necessary that the powers properly belonging to one of the departments, should not be directly administered by either of the other departments; still it is equally as necessary, in order to preserve entire to each its peculiar rights and duties, that these departments should be so far connected and blended, as to give to each a constitutional control over the others.\* Hence, in our constitution, the president has a right to negative† any bill, order, resolution, or vote, to which the concurrence of both houses is necessary, (except a question of adjournment;) and to return the same, with his objections, to the house in which it originated. And in such cases, unless two-thirds of each house shall repass it, it cannot become a law. On the other hand, without the approbation of the senate,‡ the president cannot appoint any of the executive officers. And again, to the judiciary, appertains the exclusive right of expounding the constitution; and hence it has authority to declare any unconstitutional act of congress to be void; and because the constitution has given it power to decide, and has provided for no appeal from its decision, what it has determined to be unlawful, the executive cannot perform.§

#### CHAP. VIII.—ORGANIZATION OF THE LEGISLATIVE POWER.

"In republican governments, the legislative authority necessarily predominates. The remedy for this inconveniency

228 Should these three departments be so separated as to have no influence on each other? Why?

229 How does our constitution provide for this necessary influence of the executive over the legislature?

230 How for legislative restraint over the executive?

231 How for the judiciary limitation of the executive performances?

232 What is the predominant power in republican governments?

233 How should this be remedied in part?

\* Federalist, Nos. 48 and 51.

† Art. 2, sec. 2.

‡ Art. 1, sec. 7.

§ Rawle on art. 3. sec. 2.

is, to divide the legislature into different branches; and to render those branches, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit." This division is provided for by the constitution of the United States, which vests the legislative powers of government "in a congress, which shall consist of a senate and house of representatives,"\* whose joint assent is necessary to the enactment of any law. Similar branches exist in each of the states, excepting Vermont; in which, however, there is an executive council corresponding somewhat to a senate.

Many speculative writers and theoretical politicians, have been struck with the simplicity of a legislature with a single assembly, and have concluded that more than one house was useless and expensive. But the division of the legislature into two separate and independent branches, is founded on such obvious principles of good policy, and is so strongly recommended by the unequivocal language of experience, that it has obtained the general approbation of all wise politicians. The separation of the legislature into two houses, acting separately, and with co-ordinate powers, will undoubtedly destroy the evil effects of sudden and strong excitement, and of any precipitate measures that may spring from passion, caprice, prejudice, personal influence, and party intrigue. A hasty decision is not so likely to arrive to the solemnities of a law, when it is to be arrested in its course, and made to undergo the deliberation, and probably the jealous and critical revision, of another and a rival body of men, sitting in a different place, and under better advantages to avoid the prepossessions and to correct the errors of the other branch.†

One of these branches, which in our constitution is styled the House of Representatives, should be chosen directly by the people,‡ and should be numerous enough to be acquainted with the interests and circumstances of every section of the

234 How does our constitution provide for this?

235 Have all politicians agreed to the expediency of this?

236 Is it generally acceded to?

237 What are the probable effects of such a separation?

238 Describe one of the branches of the legislature.

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\* Art. 1, sect. 1. † Kent's Commentaries, Lec. 10, ‡ Art. 1, sect. 2.



community. And, in order to represent the varying wants of their constituents, they should be elected as often as consistent with the time necessary to obtain a proper degree of knowledge on legislative subjects. By the constitution, a representative's term of office is fixed to two years.\* And hence, that length of time is said to be the duration of one congress. The whole number of representatives is regulated by an apportionment among the several states, so that from each state, there shall be one representative so often as it contains a certain number of inhabitants; (with the estimate of five slaves for three white men;) and for this purpose there must be an enumeration of the inhabitants throughout the United States every ten years. It is provided that the number which shall be entitled to a representative shall not be less than 30,000; but congress may increase it after each census as they see fit, excepting that each state shall always be entitled to at least one.†

But though the aggregate number of representatives allotted to each state is determined by the aggregate number of inhabitants; yet the right of choosing the allotted number, is to be exercised by such part of the inhabitants as the state itself may direct. That is, this right shall be conferred on those who are privileged to vote for the lowest branch of the state legislature. Hence, in some states, the number of votes for a choice of a representative is less than in others.

But as there is in all numerous representative assemblies, a propensity to yield to the impulse of violent passions, and to fluctuate with any sudden changes of opinion which may have taken place either in themselves or in their constituents; and also to be seduced by factious leaders into intemperate and pernicious resolutions;‡ one branch of the legislative assembly should be less numerous and more independent.

239 How often should they be elected; and how often are they?

240 How is the whole number of representatives regulated?

241 How is the number of people known?

242 What is the present ratio of representation?

243 Who may vote for these representatives?

244 What is the consequence of this regulation?

245 Should one branch of the legislature be as numerous as the other? Why?

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\* Art. 1, sect. 2.

† On the 22d of May, 1832, congress fixed the ratio of representation to one for 47,700 inhabitants.

‡ Federalist, No. 62.



Among the many methods of appointing the members of this branch of the legislature, that provided for in our constitution, viz. election by the legislature of each state, is undoubtedly the best for this country. "It is recommended by the double advantage of favoring a select appointment, and of giving to the state governments such an agency in the formation of the general government, as preserves their authority and contributes to render them actual members of the great body."\* The number, which is *two* for each state, was at first the result "of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation at the time of forming our constitution rendered indispensable;"† and it has been found in practice to produce no dangerous inconvenience.

As it would be contrary to the genius of a republic to trust the entire executive power to the will of one man, it seems proper that this select body should be the one upon which a part of that power should devolve. This being the case, its members should enjoy public confidence at home and abroad. And for this purpose, it seems necessary that they should have the character of permanency; so that there should be no fear of a sudden and total change of governmental measures. It is therefore provided by the constitution, that although the time for which each senator is elected will expire in six years, yet the times of their elections are so arranged that one third of them shall go out of office every second year; so that after every new election there is still a majority of former members.

#### CHAP. IX.—ORGANIZATION OF THE EXECUTIVE POWER.

"There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers to this

246 What is the best method of electing the highest branch for this country? 247 What is its recommendation?

248 What is the regulation as to the number of the senate?

249 How happened that to be adopted?

250 In what other power should they partake? Why?

251 What is necessary on this account?

252 How does the constitution provide for this?

253 What idea relative to a republican government has been held by some? Is it correct?

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\* Rawle, chap. iii.

† Washington's Letter to the States.

species of government, must at least hope that the supposition is destitute of foundation ; since they can never admit its truth, without, at the same time, admitting the condemnation of their own principles. Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks : it is not less essential to the steady administration of the laws ; to the protection of property against those irregular and high handed combinations which sometimes interrupt the ordinary course of justice ; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man, the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of *dictator*, as well against the intrigues of ambitious individuals who aspired to the tyranny and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

“Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy ? How far can they be combined with those other ingredients, which constitute safety in the republican sense ?

“The ingredients which constitute energy in the executive, are, unity, and duration.

“Those which constitute safety in the republican sense, are, a due dependence on the people ; and a due responsibility.

“Those politicians and statesmen who have been the most celebrated for the soundness of their principles, and for the justness of their views, have declared in favor of a single executive, and a numerous legislature. They have, with great

254 What is necessary to a good government ?

255 Why is it essential ?

256 What example in ancient history shows its necessity ?

257 What then shall we take for granted ?

258 Concerning what shall we inquire ?

259 What are necessary to executive energy ?

260 What are necessary for republican safety ?

261 What opinions on this subject have been held by the best politicians ?

262 How have they reasoned concerning the qualifications of the executive and legislature ?

propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people, and to secure their privileges and interests.

“That unity is conducive to energy, will not be disputed. Decision, activity, secrecy, and despatch, will generally characterize the proceedings of one man, in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.”\*

“Duration in office, has been mentioned as the second requisite to the energy of the executive authority. This has relation to two objects: to the personal firmness of the chief magistrate in the employment of his constitutional powers, and to the stability of the system of administration which may have been adopted under his auspices. With regard to executive firmness, it must be evident, that the longer the duration in office, the greater will be the probability of obtaining so important an advantage. It is a general principle of human nature, that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; will be less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a title durable or certain; and, of course, will be willing to risk more for the sake of the one than of the other. This remark is not less applicable to a political privilege, or honor, or trust, than to any article of ordinary property. The inference from it is, that a man acting in the capacity of chief magistrate, under a consciousness that, in a very short time, he *must* lay down his office; will be apt to feel himself too little interested in it, to hazard any material censure or perplexity, from the independent exertion of his powers, or from encountering the ill humours, however transient, which may happen to prevail, either in a

263 In what respects is unity conducive to energy?

264 What is the second requisite in the executive?

265 To what effects has that any relation?

266 How does it effect the executive firmness?

267 On what principle do we form this opinion?

268 What inference do we draw from this principle?

considerable part of the society itself, or even in a predominant faction in the legislative body. If the case should only be, that he *might* lay it down, unless continued by a new choice; and if he should be desirous of being continued, his wishes, conspiring with his fears, would tend still more powerfully to corrupt his integrity, or debase his fortitude. So that, in either case, feebleness and irresolution must be the characteristics of the station.”\*

With regard to the stability of administration, “there are some, who would be inclined to regard the servile pliancy of the executive to a prevailing current, either in the community, or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands, that the *deliberate* sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of those men who flatter their prejudices to betray their interests.

When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons who are appointed the guardians of those rights, to withstand the temporary delusions, in order to give them time and opportunity for more cool and sedate reflection. But more especially when those interests are disregarded by the humors of the legislature, (the will of the people being possibly contrary or neutral,) the executive ought to use his constitutional advantages for the continuation and advancement of the public welfare. Instances might be cited in which a conduct of this kind has saved the people from very

269 What would be the effect if his continuance in office depended on a new election?

270 What may some think of the stability of administration?

271 Are such opinions correct?

272 What is, and what is not demanded by the republican principle?

273 Should rulers always conform to the wishes of the people?

274 Should the executive always sanction the opinions of the legislature?

275 What is the voice of history on this subject?

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\* Federalist, No. 71.



fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure.”\*

We therefore arrive at the conclusion, that if his official term is short, he will act with reference to immediate and temporary popularity, rather than to the permanent welfare of the community; he will bestow his offices upon those who will be tools for future aggrandizement; and the whole train of his measures would manifest a corrupted integrity, an irresolution of design, and a feebleness of effort.

On the other hand, as we have seen that executive advantages must be combined with “a due dependence on the people, and a due responsibility;” his official term should not be so long as to impair the first of these requisites, or to set aside or lessen the last. It should ever be known, that there is but a short period before his administration will come under the review of the people, and its merits determined by the united voice of the nation. “Four years” were judged by the formers of our constitution to be the duration which would contribute to the firmness of the executive on the one hand, and provide against any alarm for the public liberty on the other.

As, in the course of these four years, a vacancy may happen in the office of president, the constitution provides that there shall be a “*vice president*.” And, that “in case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president; and the congress may by law provide for the case of the removal, death, resignation, or inability, both of the president and vice president,† declaring what officer shall then act as president;

\* Federalist, No. 71.

† “This power has been executed by authorizing the president *pro tempore* of the senate to perform those functions. The president *pro*

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276 What will be the probable conduct of the executive, if his term of office is short?

277 Should his official term be very long? Why?

278 What is the duration of the president’s term of office?

279 Suppose the president should die, or resign, or become incompetent?

280 What is the regulation of congress providing for the vacancy of both offices?



and such officer shall act accordingly, until the disability be removed, or a president shall be elected.”\*

But the great difference between our executive and that of the governments of the old world, is the manner in which the office is conferred. The president of the United States is elected by the people; whereas, the monarchs of Europe obtain their thrones by heirship.†

*tempore* of the senate is chosen by the senate during the absence of the vice president, or when he executes the office of president; and it has become usual for the vice president to retire from the senate a few days before the close of the session, in order that a president *pro tempore* may be chosen, to be ready to act on emergencies. If, however, there should happen to be vacancies in all these three respects, the speaker of the house of representatives is next empowered to assume the office of president; and beyond this no provision is made.

“If the vice president succeeds to the office of president, he continues in it till the expiration of the time for which the president was elected; but if both those offices are vacant, it becomes the duty of the secretary of state to take measures for the election of a president.

“Notification is to be given, as well to the executive of each state, as in one at least of the public newspapers printed in each state, that electors of a president shall be appointed or chosen within thirty-four days next preceding the first Wednesday in the ensuing December; unless there shall not be two months between the date of the notification and the first Wednesday in the ensuing December, in which case the election shall be postponed till the ensuing year. But if the term of the office of the president and vice president would have expired on the third of March next following such vacancies, no extra election is necessary; as the regular election will then take place on the same day which the secretary of state is otherwise directed to notify. For the office of both president and vice president is fixed to commence on the fourth of March, and the regular election takes place on the first Wednesday of the preceding December.” *Rawle’s View of the Constitution*, chap. v.

\* Art. ii. sect. 1. clause 5.

† The second article of the constitution, together with the twelfth article in the amendment, declares that the president, together with the vice president, chosen for the same time, shall be elected as follows:

“Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

281 What is the great difference between the president of this country and the executives of others?

282 What is the mode of electing the president?

283 How many electors is each state entitled to?

The *president* is the *only* executive officer known to the constitution; and the only one responsible to the people. The duties, however, are obviously too numerous and various for one man; hence, the constitution contemplated the creation of inferior offices by congress, and the division of labor among subordinates.

The appointment of these inferior officers, is a power necessary to, and a part of, the executive power; for the

“The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.”

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284 What is their method of voting?

285 What is the method of counting the votes?

286 Suppose that no one has a majority, how is the president chosen?

287 How is the vice president chosen if no one has a majority of electoral votes?

288 Is the president to perform all the executive functions?

289 Why should the president appoint these inferior officers?

executive duties are necessarily to be performed by them. And it is evident that if they are not appointed by, and not responsible to, the executive, he cannot be accountable for the performance of their duties.

But, in order to check a spirit of favoritism in the president, and to prevent the appointment of unfit characters, from state prejudice, from family connection, from personal attachment, or from a view to popularity; the constitution declares that, "He shall nominate, and *by and with the advice and consent of the senate*, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of department. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session."\*

At different times, congress has created four executive departments; viz. the departments of state, of the treasury, of war, and of the navy. Over each of these there is a presiding officer, called "the secretary." Besides these departments, there is the general post-office, over which is the "general post-master."

#### CHAP. X.—POWERS AND RESTRICTIONS OF THE LEGISLATURE.

Having finished our examination concerning the proper structure and organization of the law-making powers in a free government, we will now proceed to inquire what authorities should be vested in them, and what restrictions should be imposed upon them.

This inquiry will be conducted on the principle that "a government ought to contain in itself every power that is requisite to the full accomplishment of the object committed to its care, and to the complete execution of the trusts for

290 In this power of the president, what should be guarded against?

291 What is the provision of the constitution upon this subject?

292 What executive departments have been created by congress?

293 On what principle should we conduct our inquiry concerning the authority and the restraints of government?

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\* Art. ii. sect. 2. clause 1.

which it is responsible. Hence, to determine the necessary powers of the government, it will be necessary to ascertain the objects of it. And,

1. One of the primitive objects of civil society, is security against foreign danger. "The powers for this object ought to exist without limitation; because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them."\* These powers may be embraced under four heads; viz. 1. To declare war, and grant letters of marque and reprisal: 2. To raise and support armies; and to provide and maintain a navy: 3. To provide for regulating and calling forth the militia: and, 4. To lay and collect taxes, duties, imposts, and excises; and to borrow money.

1. "The right of using force or of making war, belongs to nations, so far as it is necessary for their defence, and the support of their rights."† But as the evils of war are certain, and the results doubtful, both humanity and wisdom require that it should never be undertaken without the utmost precaution. This is not always the case in monarchies; for as the king generally possesses this power, it is as often exercised for his own aggrandizement as for the good of the nation. In republics, on the contrary, the right to declare war is given to the representatives of the people; who, wishing to act in conformity with public opinion, enter into war with more reluctance and deliberation.

But, it frequently happens, that subjects of one government commit depredation upon those of another; and yet not of so serious a nature as to justify a declaration of war. In such cases, the government of the injured party are authorized by the law of nations, to issue to particular citizens *letters of marque and reprisals*; "the latter signifying a

294 What does this render necessary?

295 What is the first mentioned object of political associations?

296 What may we remark concerning the powers for this object?

297 How may these powers be classified?

298 How should the power of making war be exercised?

299 Is this always done in monarchies? Why?

300 How is it managed in republics?

301 What means are sometimes adopted when foreign depredation has been slight?

\* Federalist, No. 23.

† Rawle, chap. ix.



*taking in return*; the former, *passing a frontier*, in order to such taking."\* As such a commission is a species of war, (being an incomplete state of hostilities,) the power of granting it should be included with the power of declaring war.†

2. Involved in the power of declaring war, is the power of raising armies and equipping fleets. On this subject, the discretion of the national government should be unrestrained; for it is impossible to foresee what amount of force may become necessary for the defence of the nation. However, some, while they have allowed the propriety of this in time of war, have argued that the government ought not to be permitted to maintain standing armies in time of peace; alleging that it is putting an engine into the hands of the government that may be used for usurpation. But this objection loses its whole force when we recollect how easy it is to elude this provision by fabricating pretences of approaching danger; or even by provoking a foreign power to a threatening aspect which may be appeased by concession after forces may have been raised. On the other hand, we know that it is the practice of other nations to maintain standing armies; and accordingly a readiness for war on our own part, is not only necessary for self defence from any sudden attack, but may, by its anticipated preparations, actually deter an enemy from a hostile invasion. Still there should be some precaution against danger from standing armies; and the best is undoubtedly that of limiting the term for which revenue may be appropriated to their support.‡ This precaution has been prudently inserted in our constitution; by which provision the legislature will be obliged, at short intervals of time, to come to a new resolution on the subject, and that in the face of their constituents.§

302 By whom should authority for such proceedings be given?

303 What follows from the power of declaring war?

304 How great should be the power of government on this subject?

305 What have been the opinions of some relative to standing armies?

306 Can this objection be applied so as to have any effect?

307 What argument in favor of standing armies?

308 How may we provide against any danger from them?

309 What provision is adopted in our constitution?

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\* Duer's Outlines, part ii, chap. 1.

† Art. i, sect. 8. clause 11.

‡ Federalist, No. 41.

§ Art. i, sect. 8. clause 12 and 13.



From the right of maintaining armies and navies, follows the power to make rules for the government and regulation of them.\*

3. But, besides those who are regularly retained on stipulated compensations to serve in the army or navy, there is another class of military power, which is called the *militia*. This consists of armed citizens divided into military bands, and instructed, at least in part, in the use of arms for the purposes of war; and yet do not relinquish their civil occupations, except while they are actually in the field. Of course, they are greatly inferior in military estimate to armies regularly trained; but notwithstanding, as they embrace a great part of the able-bodied men in the nation, the militia may be said to constitute one of the great bulwarks of the nation; and nothing which tends to improve and support it, should be neglected.†

For the same reason that a government should have the power of providing and maintaining fleets and armies, it should also have full power to call forth the militia, when necessary to repel an invasion. Besides, in superintending the common defence, a government must not only provide for external attacks, but must also watch over the internal peace of the community. For, it cannot be denied that seditions and insurrections are maladies, as inseparable from the body politic, as tumors and irruptions from the natural body. For such emergencies, there can be no remedy but force; and hence we see that the government should have power to use the militia when necessary to execute its laws or to suppress insurrection, as well as to repel invasions.

If the militia are to be called into service, it is plain that, in order for them to discharge their duties with propriety, there should be a uniformity in organization and discipline. This desirable uniformity can be accomplished, only by con-

310 What right must attend the power of maintaining armies?

311 Is there any other military power besides the army and navy?

312 Describe the militia. In what estimate should we hold it?

313 Should the government have any power over it?

314 For what internal purposes may it be necessary to employ the militia?

315 Is such a requirement ever necessary?

316 What regulations are necessary for the militia?

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\* Art. i. sect. viii. clause 14.

† Rawle, chap. xii.

finding the regulation of the militia to the direction of the national authority;\* which should provide for organizing, arming, and disciplining† it, and for governing such parts of it as may be employed in its service.‡

4. *Taxation*.—The duties of superintending the national defence, and of securing the public peace against foreign or domestic violence, cannot be performed without incurring expense. “Money is with propriety considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions. A *complete power*, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue; either the people must be subjected to continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and in a short course of time perish.”§ This power is generally vested in a government under the appellation of *taxation*.

The term taxes is generical, and embraces two kinds, viz. direct taxes, and indirect taxes. Direct taxes are capitation or poll taxes, and taxes upon land. They are imposed directly upon the person or property of the citizen, independently of his will; and cannot be avoided by non-consumption or expenditure. For instance, when a tax is once levied upon land, the whole anticipated amount is sure to the government. Indirect taxes are duties, imposts, or excises, imposed upon articles of consumption or on importations from foreign countries. Of course, the people are at liberty

317 How is this to be secured?

318 Is managing the affairs of government expensive?

319 Then in what light may money be considered when applied to political purposes?

320 What power concerning it should the government possess?

321 How many methods of taxing are there?

322 What is direct taxation? Give an example.

323 What are indirect taxes? Can any one avoid them?

\* By the constitution of the United States, there is “reserved to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.”

† Art. 1, sect. vii. clause 15.

‡ Art. i. sect. 7. clause 16.

§ Federalist, No. 30.

to pay them or not; and may reduce the amount of their tax by reducing their consumption of the articles so taxed. Thus, the duty on wine will not affect me, if I do not make use of that article.

There is a diversity of opinion whether direct or indirect taxation is most consistent with the proper administration of government. But there is no doubt that every government ought to have the power of adopting either or even both, when the exigencies of the nation demand it.

The power of taxation has been treated of under the head of national defence, because, while vesting that power in congress, our constitution has specified that purpose as one of the leading objects. But military and naval defence is not the only object to which the jurisdiction of the government, in respect to revenue, must necessarily be empowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those objects which seem to be required for the general welfare.

We therefore conclude that a government should "have power to lay and collect taxes, duties, imposts, and excises," so far as they may think necessary "to pay the debts and provide for the common defence and general welfare."\*

Concomitant with the power of taxation, is that of "borrowing money" on the credit of the nation; and pledging future revenues for the payment of it. No government could subsist without this power. For there may arise exigencies, such as expenses of war, or failure of usual revenue, when the operations of the government could not be continued without this resort.†

II. It is highly necessary that the government should have power to regulate all intercourse with foreign nations. This power has reference, 1. To diplomatic intercourse; and, 2. To foreign commerce.

324 Why have we treated of taxation under the head of defence?

325 Is defence the only object for taxation?

326 What else requires it?

327 What is the constitutional provision on this subject?

328 What other power is cognate with that of taxation?

329 What is the second class of governmental powers?

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\* Art. i. sect. 8. clause 1.

† Ibid. clause 2.

1. *Diplomatic intercourse.* This includes making treaties, and sending and receiving ambassadors and other public ministers. "In its general sense, we can be at no loss to understand the meaning of the word treaty. It is a compact entered into with a foreign power; and it extends to all those matters which are generally the subjects of compact between independent nations. Such subjects are peace, alliance, commerce, neutrality, and others of a similar nature. To make treaties is an essential attribute of a nation. One which disabled itself from the power of making them, and the capacity of observing and enforcing them when made, would exclude itself from the international equality which its own interests require it to preserve; and thereby in many respects commit an injury on itself. In modern times, and among civilized nations, we have no instances of such absurdity."\*

This power must then reside somewhere; and the question is, where to deposite it. By comparing it with the executive and the legislative powers, we find "that it is neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enactment of new ones; and still less to an exertion of the common strength. Its objects are, *contracts* with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems, therefore, to form a distinct department, and to belong, properly, neither to the legislature nor to the executive."† It seldom happens in the negotiation of treaties, of whatever nature they may be, but that perfect *secrecy* and immediate *despatch* are sometimes requisite. There are cases, when the most useful intelligence may be obtained, if the informant may rely upon the secrecy of the person

330 What is signified by diplomatic intercourse?

331 Define the word treaty.

332 What are the subjects of national contracts?

333 What would be the effect of withholding the treaty-making power from the government?

334 Should this power reside in the executive or in the legislature? Why?

335 What are its objects?

336 What is generally necessary in the negotiation of treaties?

337 Give some illustrations.

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\* Rawle, chap. vii.

† Federalist, No. 75.



informed. And besides, great advantages may be lost by allowing to be known what would be our utmost concessions in case of emergency. Again, there are tides in national affairs, when by some unforeseen circumstance, the intervention of a day may occasion irreparable damage to the interests of a negotiation. Indeed, secrecy and despatch are so essentially necessary in the management of foreign negotiations, that a constitution would be inexcusably defective if it contained no provision for them. Now, it is plain that these requisites are best secured by confiding the power to one man; and hence, the executive seems to be pointed out as the most fit agent in the making of treaties. But secrecy and despatch are required only in the preliminary negotiations; and after the conclusion of a treaty, it seems proper that it should receive, before it goes into operation, that assent of the legislative body which it seems to claim on account of its operation as a law of the land.

“However proper or safe it may be in governments, where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years duration. It has been justly remarked, than an hereditary monarch, though often the oppressor of his people, has personally too much at stake in the government, to be in any material danger of being corrupted by foreign powers: but that a man raised from the station of a private citizen to the rank of chief magistrate, possessed of but a moderate or slender fortune, and looking forward to a period not very remote, when he may probably be obliged to return to the station from which he was taken, may sometimes be under such temptations to sacrifice duty to interest, as would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state for the acquisition of wealth. An ambitious man might make his own aggrandizement by the aid of foreign power, the price of his treachery to his constituents.”\*

338 In what branch of the government are these requisites best found?

339 By what other body should the treaty be approved? Why?

340 Why may it be proper to intrust the treaty-making power to an hereditary monarch?

341 Why should it not be given to an elective magistrate?

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\* Federalist, No. 75.



"The power in question accordingly constitutes a distinct department in the government of the United States.\* It is formed from the association of one branch of the legislature with the executive power; and for this purpose, the constitution invests the senate with the attributes of an executive council. The senate was selected for this purpose, because, from its smaller number, it may be more easily assembled; and from its greater permanence, it is presumed to be governed by steadier and more systematic views of public policy, than the house of representatives."†

The power of sending and receiving ambassadors and other public ministers is consequent to the power of making treaties. As nations cannot treat together as two individuals, it is evident that they must hold their conferences, by means of delegates, generally called ministers. Of these there are three orders; *Ambassadors*, *Envoys* or *Plenipotentiaries*, and *Ministers Resident* or *Chargé d'Affairs*. Besides these diplomatic ministers, there are agents with commercial powers, styled *Consuls*. It seems proper that all ministers and consuls should be appointed by the treaty-making power, and should obey any instructions communicated by the executive.

2. National government should have full control over *foreign commerce*. This is necessary, in order that it may resort to national retaliation; encourage domestic navigation and home manufacture; obtain mercantile advantages for the community; and raise a competent revenue for government expenses. As this power is evidently so essential to the declaring of war, enforcement of treaties, and levying of duties, it seems unnecessary to enlarge upon it in this place. It may be proper however to state, that it extends to the

342 How is that power disposed of in the United States?

343 Why was the senate selected as one of the powers in this business?

344 What power is consequent to the treaty-making power?

345 How many orders of foreign ministers are there?

346 What other governmental agents in foreign countries?

347 By whom should foreign ministers and consuls be appointed?

348 Why is it necessary that the national government should have full control over foreign commerce?

349 To what minor particulars does this control extend?

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\* Constitution, art. ii. sect. 2. clause 2.

† Duer's Outline, § 205—207.

jurisdiction of seamen on board of ships belonging to any citizen of the state, and to laws relative to quarantine, pilotage, and to wrecks of the seas.\*

An unavoidable incident to the power of regulating foreign commerce, is that of punishing offences committed on the high seas. Piracy may be said to be an offence against all nations, and punishable by all; and it is a received opinion that every nation has a right to attack and exterminate the perpetrators of so heinous a crime. This right, like its kindred rights, ought, as is provided in our constitution, to be vested in the national government.

III. When a government is made up of several confederated states, the constitution must embrace another class of stipulations; providing for the maintenance of harmony and proper intercourse among those states; laying a proper restraint upon the general government and the state governments, so as to hinder any mutual interference of their respective authorities; and stating what objects of general utility shall be confided to the national powers.

As provisions of this sort must be regulated by circumstances of time and place, there can be no specific rules given for them. Even in the formation of the constitution of the United States, there was a diversity of opinion among great and good men. And as those different opinions have continually led to difference of construction and interpretation, relative to national and state rights; it would be unwise for the author, with his limited knowledge and experience, to undertake an elucidation of any point which involves these original principles of opposition.

It may be well to state, however, that the constitution of the United States contains the following stipulations.

1. For the maintenance of harmony and proper intercourse among the states.

“To regulate commerce among the several states, and with the Indian tribes:

350 What power must necessarily attend this control?

351 What stipulations are necessary for a republic made up of confederated states?

351 How must these provisions be regulated?

352 What articles in our constitution relate to the preservation of harmony among the states?

“To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

“To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

“To provide for the punishment of counterfeiting the securities and current coin of the United States :

“To establish post offices and post roads :\*

“Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof:†

“The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states :

“A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime :

“No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”‡

2. Restrictions of the powers of the national and of the state governments.

There is reserved “to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress :§

“The privileges of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it :

“No bill of attainder or ex-post facto law shall be passed :

“No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken :

353 What restrictions of powers are stipulated in the constitution ?

\* Art. i. sect. 8. clauses 3, 4, 5, 6, and 7.

† Art. iv. sect. 1.

‡ Art. iv. sect. 2.

§ Art. i. sect. 8. clause 16.

“No tax or duty shall be laid on articles exported from any state :

“No preference shall be given by any regulations of commerce or revenue to the ports of one state over those of another : nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.”\*

“No state shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, ex-post facto law, or law impairing the obligation of contracts ; or grant any title of nobility :

“No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the congress.

“No state shall, without the consent of the congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.”†

“The constitution, and the laws of the United States which shall be made in pursuance thereof ; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land ; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

“The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.”‡

“Congress shall make no law respecting an establishment

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\* Sect. ix. clauses 2, 3, 4, 5, 6.

† Art. i. sect. 10.

‡ Art. vi. clauses 2 and 3.



of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”\*

“The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.†”

“A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”‡

“No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.”§

“The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”||

Under this head may be classed the article on amendments.

“The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no state, without its consent, shall be deprived of its equal suffrage in the senate.”

### 3. Objects of general utility.

“To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:”¶

“To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United

354 What is the article on amendments?

355 What articles provide for objects of general utility?

\* Amend. art. 1.

† Art. iii. sect. iii. clause 3.

‡ Amend. art. ii.

§ Amend. art. iii

|| Amend. art. ix.

¶ Art. 1, sect. 8, clause 8.



States ; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings : And,

“ To make all laws which shall be necessary and proper for carrying into execution all the powers vested by this constitution in the government of the United States, or in any department or office thereof.”\*

“ New states may be admitted by the congress into this union : but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

“ The congress shall have power to dispose of and make needful rules and regulations respecting the territory or other property belonging to the United States.”†

“ The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion ; and on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.”‡

#### CHAP. XI.—MUNICIPAL LAW.

The governmental powers that we have heretofore treated of, relate to national objects ; or such objects as embrace the general concerns of the nation. But besides these, there is a class of laws which more preeminently concern the people ; laws whose object is to secure to every individual of the community, all his rights of person and of property.

These laws are called *civil* or *municipal laws* ; *civil*, because they relate to a *civis*, a member or citizen of any particular community ; *municipal*, because they belong to a *municipium*, a community dependant on another, but possess-

356 Of what kind are the governmental powers that we have already treated of ?

357 What other class of laws is there ? Are they of importance ?

358 What are these laws called ?

359 Why are they called civil laws ? Why municipal laws ?

\* Art. i. sect. viii. clauses 17 and 18.

† Art. iv. sect. 3.

‡ Art. iv. sect. 4.

ing the right of enacting laws for the regulation of its own policy. They were called "municipal," in compliance with common speech, by Judge Blackstone; because they may, with sufficient propriety, be applied to any one state or nation which is governed by the same laws and customs. In this country they receive the name with peculiar fitness, because they are almost entirely under the control of the individual states.

The rights to be secured by municipal laws, are either absolute, being such as belong to individuals in a single or unconnected state; or relative, being those which arise from civil and domestic relations.

The absolute rights of individuals may be resolved into the right of personal security, the right of personal liberty, and the right to acquire and enjoy property. These rights have been justly considered, and frequently declared, by the people of this country, to be natural, inherent, and unalienable. The effectual security and enjoyment of them depend upon the existence of civil liberty; and that consists in being protected and governed by laws made, or assented to, by the representatives of the people, and conducive to the general welfare.\*

These rights, on account of their importance, together with the most essential articles of civil liberty, have been in many constitutions defended from the infringement even of the government itself. This is done in a *bill of rights*, where they are collected, digested, and declared, in a precise and definite manner.

The necessity, in our representative republics, of these declaratory codes, has been frequently questioned, inasmuch as the government, in all its parts, is the creature of the people, and every department of it is filled by their agents, duly chosen or appointed, according to their will, and made responsible for mal-administration. It may be observed, on

360 Of how many classes are the rights which are to be secured by municipal laws?

361 Mention some of the most important absolute rights.

362 What has been said of these? How are they secured?

363 Have people been tenacious of these rights?

364 How have they defended them from the infringement of rulers?

365 What reasons have been adduced to show that a bill of rights is not necessary?

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\* Kent's Com. sect. 24.

the one hand, that no gross violation of those absolute private rights, which are clearly understood and settled by the common reason of mankind, is to be apprehended in the ordinary course of public affairs; and as to extraordinary instances of faction and turbulence, and the corruption and violence which they necessarily engender, no parchment checks can be relied on as affording, under such circumstances, any effectual protection to public liberty. When the spirit of liberty has fled, and truth and justice are disregarded, private rights can easily be sacrificed under the forms of law. On the other hand, there is weight due to the consideration, that a bill of rights is of real efficacy in controlling the excesses of party spirit. It serves to guide and enlighten public opinion, and to render it more quick to detect, and more resolute to resist, attempts to disturb private rights. It requires more than ordinary hardness and audacity of character, to trample down principles which our ancestors cultivated with reverence; which we imbibed in our early education; which recommend themselves to the judgment of the world by their truth and simplicity; and which are constantly placed before the eyes of the people, accompanied with the imposing force and solemnity of a constitutional sanction.

Bills of rights are part of the muniments of freemen, showing their title to security; and they become of increased value when placed under the protection of an independent judiciary, instituted as the appropriate guardian of private right. Care, however, is to be taken in the digest of these declaratory provisions, to confine the manual to a few plain and unexceptionable principles. We weaken greatly the force of them, if we incumber the constitution, and perhaps embarrass the future operations and more enlarged experience of the legislature, with a catalogue of ethical and political aphorisms, any of which, may be reasonably questioned, or justly condemned.\*

But for the most part, the constitution invests the legislature with power to ascertain the rights and duties of citizens;

366 What has been said in favor of retaining them?

367 In what kind of government have they the most value?

368 What care is necessary in drawing them up?

369 Are all the rights of citizens ascertained and defended in the constitution itself?

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\* Kent's Com. sect. 24.

and to enact laws for the preservation of those rights, and the fulfilment of those duties. This appears to be the great end and object of civil government. Men wish to enjoy the benefits of a common union; and for this purpose they enter into engagements to each other, by which they assume duties not obligatory by the laws of mere nature or religion. Each man promises to fulfil the duties of a citizen, which require him to contribute, as far as in him lies, to the peace and prosperity of the society. In order to secure the advantages of this union, it is necessary that the boundaries of civil right and wrong be ascertained, and that the rights should be enforced and the wrongs redressed. This must be done by the supreme power of the state, be that what it may; and this is the object of that power in all its law-making operations. Accordingly, municipal law is “a rule of conduct prescribed by the supreme power of the state, commanding what is right and prohibiting what is wrong.”\*

That a law may answer the purpose of a complete rule of conduct, it is necessary that it should embrace several particulars. For this purpose every law may be said to consist of several parts: one, *declaratory*, whereby the rights to be observed, and the wrongs to be avoided, are clearly defined and laid down; another, *directory*, whereby the subject is instructed and enjoined to observe those rights, and to abstain from the commission of those wrongs; a third, *remedial*, whereby a method is pointed out to recover a man's private rights, or redress his private wrongs; to which may be added a fourth, usually termed the *sanction*, or *vindictory* branch of the law, whereby is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty.†

It is evident that the law must be promulgated to the people who are to obey it. This may be done by universal tradition and long practice, which suppose a previous publi-

370 What benefits appear necessary to mankind; and how are they secured?

371 What is the object of the law-making power?

372 What is municipal law?

373 What is necessary to a law to make it a complete rule of conduct? What are its parts?

374 How may the laws be promulgated?

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\* Blackstone.

† Ibid. book 1.



cation, as is the case of what is called the common law. It may be notified, *viva voce*, by officers appointed for that purpose, as is done with regard to proclamations, and such acts of the legislature as are appointed to be publicly read in churches and other assemblies. And, lastly, it may be notified by writing, printing, or the like; which is the general course taken with all the acts of our government. Such a provision ought to be made for their publication, that by an ordinary care, and without taking up much time and thought, people may be able to know the pleasure of their governors. There is another circumstance, which is worse than the non-promulgation of a law; and that is the making of laws “*ex post facto* :” when after an action (indifferent in itself) is committed, the legislator then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it. All laws should be made to commence “*in futuro*,” and be notified before their commencement. When the laws or rules of conduct are properly notified or prescribed, it is the business of the subject to be thoroughly acquainted with them; for if ignorance of what he might know, were admitted as a legitimate excuse, the laws would be of no effect, but might always be eluded with impunity.

Each civil law may be divided into two branches; the one *distributive*, the other *vindictive* and *penal*. The *distributive* part is that which constitutes the rules and measures of things, whereby we know what belongs to us, and what to others; so that we may not disturb or interrupt others in the enjoyment of their own, nor be interrupted by them; and what each man may lawfully do or not do. The *vindictive* part, is that branch by which are determined the punishments to be inflicted on those who violate the laws.

It is necessary that these two should be combined. For if a law say no more than “whatever you catch in your net in the sea, shall be yours,” it is in vain; for though another take from you what you have caught, it is still yours; so that what the law defines to be yours, was yours before that

375 How liberal should be the provision for their publication?

376 What is worse than the non-promulgation of a law?

377 After the law has been published is ignorance of it excusable?

378 Into how many branches may a civil law be divided?

379 Describe the distributive part. The vindictive part.

380 Why is it necessary that these two essentials be combined?



law, and will be yours after it though possessed by another. A law, therefore, is but an empty sound unless it determine the thing to be yours in such a sense as to forbid every body else from disturbing you in the possession of it. But such prohibition will be vain, unless there be a penalty annexed to it.

A law, therefore, must contain both these parts, that which prohibits and that which punishes. The first whereof, which is called *distributive*, is prohibitory, and speaks to all; the latter, called *vindictive* or *penal*, is mandatory, and speaks only to the public officers. Whence it follows, that to all civil laws there is annexed a penalty, either implicitly or explicitly; for that is no law, which may be violated with impunity.

As the determination of this penalty to particular individuals and instances, belongs to the courts of justice, we will devote a little attention to the organization of that branch of civil government, before we treat of the application of law to the administration of justice.

#### CHAP. XII.—ORGANIZATION OF THE JUDICIAL POWER.

The manner of constituting the judicial department seems to embrace three several objects.\* 1. The mode of appointing the judges: 2. The tenure by which they are to hold their places: 3. The partition of the judiciary authority between different courts, and the relations which these courts are to hold to each other.

1. According to the true principle of representative government, and in order to secure to any department a will of its own, it seems necessary at first sight that every appointment should come from the people, and through channels having no communication with each other. But in the constitution of the judiciary department, in particular, it might be inexpedient to insist rigorously on this principle; first, be-

381 Has a law any importance without a penalty?

382 Describe more particularly the intention of the two parts of a law.

383 To whom belongs the infliction of the penalty?

384 In ascertaining the manner of constituting courts of justice, how many objects deserve attention? Name them.

385 What at first right seems necessary to appointments?

386 Should that principle be rigorously attended to always?

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\* Federalist, No. 78.

cause peculiar qualifications being essential in the members of that department, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments should be held in that department, must soon destroy all sense of dependence upon the authority which confers them.”\*

What then is the best method of appointing the judges? The answer to this is evident when we look into the nature of their office. We see that “their power is auxiliary to the executive authority, and in some degree partaking of its nature;” for, “the laws cannot be correctly executed unless there is somewhere resident a power to expound and apply them.”† Hence, as the constitution provides,‡ the judges should be appointed by the president in the same manner as his executive officers.

It has been generally recommended that the number of judges be small. For the calm reflection and patient inquiry necessary for the solution of judicial questions are not congenial with the passions, prejudices, and clamor of numbers. Besides, the shame of unjust decisions is more easily divided, where each shelters himself under another’s example, and thinks his own character hid in the crowd. Hence, their number ought to be so few, as to make the conduct of all conspicuous; and each responsible in his own reputation for the opinion in which he concurs. In this choice of a number however, the preference ought to be given to an even over an odd one, and of four to any other number; for in this number there is enough to contain a variety of opinions, and not too many to destroy individual responsibility. Besides, nothing can be decided without a majority of three to one, a proportion not too great, when every fresh decision is to form a future precedent. And, lastly, if, from an equality of votes, there be no decision, although the parties may suf-

387 Why should it not be followed in appointing judges?

388 What is the nature of their power?

389 What do we conclude from this fact?

390 What does Dr. Paley recommend as to the number of the judges? On what account?

391 What particular number does he suggest? Why?

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\* Federalist, No. 51. † Rawle, ch. xx. ‡ Art. ii. sect. 2. clause 2

fer from such indecision, the public safety is not endangered by a hasty precedent.

There are two kinds of judicature ; one fixed, the other casual. In the former, the office of the judge remains in the same person ; in the latter, the office remains, but the person is changed. Although the *permanent* judge possesses the knowledge arising from long experience, still, as he is known beforehand, he is accessible to the parties, and may be acted on by the influence of hope or fear, to swerve from his duty. On the other hand, though the judge who is *not* permanent is not liable to be biassed, yet he has a defect in the want of that legal science which produces uniformity and justice in judicial decisions. To obtain, then, the advantages of both without the inconveniences of either, the American law determines that causes shall be tried by a jury of twelve casual judges, assisted by one fixed judge ; and while the latter imparts to the former the fruits of his legal knowledge, the jury, by their disinterestedness, can check any influence which may have been previously produced in the judge. If there were no jury, the judge might inflict injustice, from passion, prejudice, or self-interest ; if there were no judge, injustice might be inflicted by the ignorance of the jury ; and against the evils of either plan, the present system offers the best security.

From so excellent a mode of trial, every deviation ought to be watched with vigilance, and admitted with reluctance. Summary convictions before justices of the peace ; the jurisdiction of courts of equity, and of conscience ; and all extensions of the distinctions between questions of law and matters of fact ; are so many infringements on this great charter of public safety.

II. With regard to the tenure by which the judges are to hold their places ; there is to be considered their duration in

392 How many kinds of judicature are there ? Describe them.

393 What are the advantages and disadvantages of a permanent judge ?

394 What are the advantages and disadvantages of one that is not permanent ?

395 What is our regulation for the employment of both ?

396 What defect would arise from having no judge ? What from having no jury ?

397 What are unwise deviations from this mode of trial ?

office, the precautions for their responsibility, and the provisions for their support.\*

1. The mode of appointment is of little consequence as to principle, if when it has been made, the magistrate is independent of the further favor of the appointing power.† This is highly necessary; for he is frequently called to judge between the ruler or his partizans, on the one side, and the subjects on the other. Now it has been well said, “that nothing will contribute so much to his firmness and independence as *permanency in office*.” And therefore we conclude that this quality should be an indispensable ingredient in his tenure; and to it we look as to the *citadel* of the public justice and the public security.

“The standard of *good behavior* for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy, it is an excellent barrier to the despotism of the prince; in a republic, it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.”‡

And it is worthy of remark that permanency in the tenure of this office, and of this alone, is fraught with no danger to the commonwealth. For, “the executive not only dispenses the honors, but holds the sword of the community; the legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of

398 Of what must we consider in determining the proper tenure of the judgeship?

399 What will take away any disadvantage that may attend the mode of appointment?

400 Why is the independence of the judge necessary?

401 What will best secure this independence?

402 What may be styled a permanence in office?

403 Of what consequence is that standard when in monarchical governments? And when in a republic?

404 Does it threaten any danger to the commonwealth?

405 Why does it not in the judiciary, when we know that it does in the other departments?

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\* Federalist, No. 78.

† Rawle, 269.

‡ Federalist, No. 78.



the strength or of the wealth of the society ; and can take no active resolution whatever. It may truly be said to have neither *force* nor *will*, but merely *judgment* ; and must ultimately depend upon the aid of the executive arm for the efficacious exercise even of this faculty. So that it is beyond comparison, the weakest of the three departments of power, and can never attack with success either of the other two.”\*

But farther, “ the complete independence of the courts of justice, is peculiarly *essential* in a limited constitution. By a limited constitution, is meant one which, like ours, contains certain specified exceptions to the legislative authority ; such, for instance as that it shall pass no bills of attainder, no ex-post facto laws, and the like. Limitations of this kind, can be preserved in practice no other way than through the medium of the courts of justice ; whose duty it must be to declare all acts, which are contrary to the manifest tenor of the constitution, void. This consideration will afford a strong argument for the permanent tenure of the judicial offices ; since nothing will contribute so much as this to that independent spirit in the judges, which must be essential to the faithful performance of so arduous a duty.”†

2. As the judges should hold their office during good behavior, it is necessary that the constitution should contain a complete precaution that they act up to their responsibility. The only provision that can be made on this point, consistently with the necessary independence of the judicial character, is the liability of impeachment. And this is declared in Art. ii. sect. 4. “ The president, vice president, and all civil officers, [and a judge is a civil officer,] of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.”

There is one point connected with this part of the inquiry, which has created some dispute among politicians. It is

406 What may be said of the power of the judiciary ?

407 When is the independence of the judge most essential ?

408 What is meant by a limited constitution ?

409 How can its limitations be preserved ?

410 What does the permanency of the judicial office render necessary ?

411 What provision can be made upon this point ?

412 Is that provision in the constitution ?

413 What disputed point is connected with this part of the subject ?

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\* Federalist, No. 78.

† Ibid.

whether there should be a constitutional provision for removing judges on account of inability. Those in favor of such a provision say, that a judge may become unfit for his duties, by reason of infirmity, old age, or otherwise without any fault of himself; and that as this would not render him a proper subject for impeachment, he might retain his office to the manifest detriment of the public. But it may be replied to this, that the mensuration of the faculties of the mind has no place in the catalogue of known arts; and an attempt to fix the boundary between the regions of ability and those of inability, would much oftener give scope to personal and party attachments and enmities, than advance the interests of justice, or the public good.”\* In every instance, except the case of insanity, the investigation must be vague and dangerous; and the result, in a great degree, arbitrary. But for insanity, there is no need of any formal or express provision; for that, at any time may be safely pronounced a virtual disqualification.

On the other hand, there are some who would take as they suppose a middle course; and assert that on the attainment of a certain age, (some say sixty, some say seventy,) the judge should no longer be legally competent for the office. But by this act, they would drive from the public service, men who have their faculties, not only in full vigor, but improved by time and experience. “The deliberating and comparing faculties generally preserve their strength much beyond that period in those men who survive it; and when, in addition to these circumstances, we consider how few there are who outlive the season of intellectual vigor, and how improbable it is that any considerable proportion of the bench should be in such a situation at the same time, we shall be ready to conclude that limitations of this sort have little to recommend them.”†

There is another requisite, which forms a powerful check on the discretion of the judges. It is the publicity of its

414 What has been said in favor of a provision for removing them on account of inability?

415 What may be replied to this argument?

416 What would be the result of an investigation of this nature?

417 What have some esteemed a middle ground?

418 What may be said of removal on account of a certain age?

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\* Federalist, No. 79.

† Ibid.

proceedings before a promiscuous concourse of bystanders, and the members of the law profession. In the presence of such an assembly, where the impartial opinion of the intelligent bar will guide the less intelligent though equally impartial public, the judge will fear to indulge his dishonest wishes ; as in so doing he must encounter, what few can support, the censure of his equals and the reproaches of his country.

3. A competent and a fixed provision for the support of the judges is of great importance. "For in the general course of human nature, a power over a man's subsistence amounts to a power over his will." But what precautions should be taken on this subject ? In some cases, permanent salaries have been established for the judges. But one may easily see that a provision to this effect is rendered inadmissible in a constitution, by the frequent fluctuations which take place in the value of money, and in the state of society. It is seen to be still more inexpedient, when we consider that every succeeding age is more and more luxurious and extravagant ; so that in process of time, that may be looked upon as exceedingly penurious, which is abundantly competent now. It seems the most prudent to leave it to the discretion of the legislature to vary the amount of salary according to the variations of circumstances ; yet under certain restrictions, so as to put it out of the power of that body to change the condition of an acting judge for the worse.\* This is wisely contrived in the constitution, which provides that "the judges, both of the supreme and inferior courts shall, at stated times, receive for their services a compensation, which *shall not be diminished* during their continuance in office."†

III. As to the partition of the judiciary authority between different courts, it is an established maxim that there must be

419 What other check on the judges is requisite ?

420 Is it of much effect ?

421 Why is it important that there should be a fixed support for the judges ?

422 What precaution has been taken by some governments ?

423 Is that method a wise one ? Why ?

424 What is the most prudent regulation ?

425 How does our constitution treat of it ?

426 In constituting several different courts, what is an established maxim ? Why is this necessary ?

\* Federalist, No. 79.

† Art. iii. sect. 1.

some tribunal, than which there can be no higher." This is necessary in order to ensure uniformity in the interpretation and operations of the constitution and laws. Where there are many tribunals, there must be a diversity in the construction of the laws; and if each of them is final, any obligation may be admitted in one section of the country, and denied in another. The existence of a court of the last resort, therefore, by whose final sentence all others are bound and concluded, is indispensable for the purposes of public justice. This last resort may be differently constituted, but there must be some final mode of deciding.

Different modes of final jurisdiction have been suggested. By some it is thought that the highest legislative body should be made the final court of error and appeal. But in the first place, this approaches too near to the violation of that rule which requires a separation of the departments of power. "From a body which had had even a partial agency in passing bad laws, we could rarely expect a disposition to temper and moderate them in the application. The same spirit which had operated in making them, would be too apt to influence their construction. Still less could it be expected, that men who had infringed the constitution, in the character of legislators, would be disposed to repair the breach in that of judges. In the next place, every reason which recommends the tenure of good behavior for judicial offices, militates against placing the judiciary power, in the last resort, in a body of men chosen for a limited period."\*

There are yet other reasons against it; such as the unavoidable suspension of legislative business; the increased expense of supporting so large a body of men; and the violence and tumult inseparable from large assemblies, which are inconsistent with the patience, method, and attention, requisite in judicial investigation.

"These considerations teach us to applaud the wisdom of those states which have committed the judicial power in the last resort, not to a part of the legislature, but to distinct and

427 What body have some supposed should be the final resort?

428 What is the first objection to that? Why?

429 What is the next objection?

430 What other two reasons are against it?

431 What are we taught by such considerations?

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\* Federalist, No. 81.



independent bodies of men.”\* Such a body in each government is generally styled the *Supreme Court*.

But in order to obviate the necessity of having recourse to the supreme court in every case of legal cognizance, and for the purpose of expediting the decision on the multitude of minor cases which are to be settled by the law; it is expedient that many inferior courts should be constituted, and located in such a manner that each shall embrace but a small extent of territory. Under such an arrangement of the judiciary, the supreme court has original jurisdiction over but a few of the most important causes; and in the rest, it has only appellate jurisdiction, as they must first be tried in an inferior court.

#### CHAP. XIII.—ADMINISTRATION OF JUSTICE.

[As it regards the operation of the judiciary, our national courts have cognizance of cases that derive some peculiarity from the federal league of our republic. It does not fall within the scope of this work to specify them.

The state courts adjudicate on most of the questions that are decided by municipal law. We will consider briefly what maxims ought to guide their proceedings.

It is a principle in the *English* law, that an act of the legislature, delivered in clear and intelligible terms, cannot be questioned, or its authority controlled in any court of justice. But this principle does not prevail in the United States; though, if there be no constitutional objection to a statute, it is with us as absolute and uncontrollable as laws flowing from the sovereign power, under any other form of government. But in this, and all other countries where there is a written constitution, designating the powers and duties of the legislative, as well as of the other departments of the government; an act of the legislature is void if it is not

432 Is one court sufficient for all legal decisions ?

433 What then is necessary ?

434 What jurisdiction have the different courts ?

435 What cases are brought before our national courts ?

436 What are brought before our state courts ?

437 Of what force are legislative acts in Great Britain ?

438 Is this the case in the United States ?

439 When is an act of the legislature of no account ?

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\* Federalist, No. 81.

agreeable to the constitution. The law with us must conform, in the first place, to the constitution of the United States, and then to the subordinate constitution of its particular state; and if it infringes the provisions of either, it is so far void.

The judicial department is the proper power in the government to determine whether a statute is or is not constitutional. The interpretation or construction of the constitution, is as much a judicial act, and requires the exercise of the same legal discretion, as the interpretation or construction of a law. The courts of justice are in duty bound, to bring every law to the test of the constitution, and to regard the constitution, first of the United States, and then of their own state, as the paramount or supreme law, to which every inferior or derivative power and regulation must conform. The constitution is the act of the people, speaking in their original character, and defining the permanent conditions of the social alliance; and there can be no doubt that every act of the legislative power, contrary to the true intent and meaning of the constitution, is absolutely null and void.\*

To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men, acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. The proper and peculiar province of the courts is the interpretation of the laws. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It must therefore belong to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred: in other words, the constitution ought to be preferred to the

440 To what must a law conform in order to be of force?

441 How can it be determined whether a statute is or is not constitutional?

442 Ought they always to do it? Why?

443 What would be implied in the denial of this principle?

444 By what other argument can it be shown that judges should have primary regard to the constitution?

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\* Ken's Com. Lect. 20.

statutes; the intention of the people, to the intention of their agents.

Nor does the conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.\*

But when a statute is not unconstitutional, the court must decide with reference to it. And here the chief inquiry is, how far, and for what reasons, it is expedient to conform to former decisions; or whether it be necessary for judges to attend to any other consideration than the apparent and particular equity of the case before them.]

Now, although to assert that precedents by one set of judges should be deemed incontrovertible in succeeding cases, would be to attribute to the sentence of those judges all the authority of a solemn act of the legislature; yet general expediency requires that a series of precedents be not overthrown, unless there is a detection of manifest error or dishonesty in the judge or court by whom the question was first decided. For, by this deference to prior decisions, there are two advantages; first, the judge is bound by certain rules; and, second, the subject may know those rules beforehand, and therefore know how to act and what to expect. Were the judge left free to decide, uninfluenced by precedents, he would be intrusted with a power too dangerous to be given to any man. It would be opening the door to every kind of concealed partialities; which, as they cannot be destroyed, ought to be confined within positive bounds. It is in vain to say that impeachment is always at hand to punish

445 Is then the judiciary superior to the legislature?

446 But suppose that the statute is constitutional?

447 What then is to be inquired of concerning the courts?

448 What is our conclusion relative to precedents?

449 What two advantages are gained by such a procedure?

450 If precedents were of no account, what power would devolve upon the judge?

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\* Federalist, No. 78.

abuses of judicial discretion ; for how can government pronounce a decision to be wrong, where there exists no acknowledged standard of what is right ? an event which must frequently occur, if prior decisions be not attended to.

By adhering to precedents, not only is the danger of partiality diminished, but the people obtain an assurance of their rights, and a knowledge of their duties. And, as each man can expect only that decision in his case, which he knows others to have received in cases similar ; and as such expectation can rest only on the existence of precedents, and the value set on them ; to remove the grounds of his expectation, by rejecting such precedents, is to entail on him the worst effect of slavery, an uncertainty in his rights and an ignorance of his duty. The well-being of society further demands a uniformity of judicial proceedings ; for if they be not uniform, (and they can be uniform only by adhering to precedents,) the event must be uncertain ; and as the certainty of failure checks the spirit of litigation, so the uncertainty of non-failure will lead to law-suits, which the smallest chance of success is sufficient to encourage ; to say nothing of the intimidation which a dubious litigation holds out, favorable only to the strong in purse. Besides, though a decision may render justice to the parties, still the most important part of the judicial business remains, which is to put an end to future litigation, by so settling a doubt once raised, that no subsequent question can ever present itself similar to the parent one. Now this advantage can be attained only by considering such previous decision as a direction for future judges. Add to this, every departure from decisions long submitted to, shakes the stability of all legal title. For, instead of fixing a new, it is merely unfixing the old points ; since, if one race of judges be permitted to set aside the decisions of their predecessors, those who next try the question, may as fairly set aside the decision last made.

But though much is gained to the public by this adherence to precedent, two evils arise from it : 1. In the hardship of

451 Could it not be counteracted ?

452 How do precedents furnish people with a knowledge of duty ?

453 What effect upon litigation is occasioned by an adherence to precedents ?

454 What is the most important part of judicial business ?

455 How may this advantage be obtained ?

456 What evils may arise from an adherence to precedents ?



particular decisions : and 2. In the intricacy of the law, as a science. On the first of these evils, however, it may be observed, that the general utility of uniformity is of more importance than the injustice of a particular case ; and, on the second, that the intricacy of the law merely induces the necessity of the separate profession of advocates ; who, withdrawn from other pursuits, are thus enabled to obtain a knowledge of the law of precedent. We allow that this profession is necessary ; for precedents should be known to the advocates as well as to the judge ; and as they must be the fruit of laborious research, they cannot be obtained by the great mass of the community.

But this leads to another inquiry. And one revolving on this subject, may ask, why, since the maxims of natural justice are few and evident, do there arise so many doubts in their application ? If the principle of municipal law be simple, whence the difficulty of administering it ? Where the rules of moral conduct are clear, what room is there for litigation ? If a system of ethics, founded on reason and revelation, can be comprised within a pocket-volume, and the moralist can, as he pretends, describe in a few pages the rights and duties of mankind in their different relations to each other ; what need of those codes of criminal and civil law, and mass of statutes and precedents, which require a long life to peruse even, much less to remember ? for, unless the laws of nature and morals are much less uniform and certain when applied to practice, than they appear to be in theory, it were better that every case were tried on its own merits, than to be fettered by precedents and authorities ; since the only use of them is to give, what it is said judicial proceedings would otherwise want, certainty and uniformity.

To account, then, for the origin of so much litigation, despite the clearness of natural justice, it is to be remarked,—

1. That in a theory of morals, it is supposed that the facts

457 What may be remarked concerning the first ?

458 What concerning the second ?

459 Why is this profession necessary ?

460 What questions are suggested by revolving upon the subject of jurisprudence ?

461 What would one suppose would follow if jurisprudence were as certain as morality ?

462 What is the first thing that accounts for so many sources of litigation ?

are ascertained ; and not only so, but that even the motives are laid bare. While, in a court of justice, both facts and motives, previously unknown, are to be elicited from conflicting testimony and contending probabilities ; and it is because this inquiry is attended with so much perplexity, that there is such a supply of doubt and litigation. Besides, the science of morality is to be considered rather as a direction to persons who are conscious of their own motives, and to whose consciousness the moralist can and does appeal ; than as a guide to a judge, whose decision must proceed on rules of evidence and calculations of credibility, with which the moralist has no concern.

2. Many cases occur, where the law of nature or of expediency, merely ordains that a general rule be adhered to, and that any one actually established be preserved ; but leaves to the law of the land to determine what rule, either introduced by an act of the legislature or established by common consent, shall be the guide of duty. Thus, while it ordains that the peace of a country is not to be disturbed by the want of laws to regulate inheritances, it states neither what those laws ought to be, nor even what is to constitute an inheritance ; points which it leaves to the law of the land to determine, because it is unable to decide them itself. The only answer it returns to our inquiries is, that some certain and general rule must be laid down by public authority ; be obeyed when laid down ; and that the quiet of the country be not disturbed by capricious innovations. This neutrality of the law of nature is found in nearly all questions relating to the acquisition of property ; and as recourse must be had to the law of the land, which is known from the statutes of the legislature and the precedents of the courts, the interpretations of such statutes and the search after such precedents becomes the business of professed lawyers.

Besides, positive authorities are wanted to give precision to many things which are in their nature *indeterminate*.

463 What is the object of ethical science ?

464 What is the second reason for so much litigation ?

465 Give an example.

466 What is the only answer from the law of nature to our inquiries concerning civil conduct in many cases ?

467 How does this neutrality of the law of nature lead to litigation ?

468 Why must positive authorities ever be superadded to the law of nature ? Give an example.

Thus, though nature has not determined one and the same period of time when a youth ceases to be a minor; still, it is necessary for mutual security that a precise period be fixed; and hence the law must determine, what nature has left indeterminate respecting the period of nonage. Again, there are things, which are in their nature perfectly *arbitrary*; and to which, certainty can be given from positive regulations alone. Thus, by the law of nature, it is expedient that a limited time be assigned to a defendant to plead to the charge laid against him, and that the default of pleading within the given time be taken as a confession of the charge; but the law of nature cannot define the days and months of such necessary time, and therefore they must be defined by law or custom alone; and the same remark applies to all those proceedings which form what is called the practice of the courts.

3. In a contract, whether express or implied, which involves a great many conditions, the parties expected that in the interpretation of such conditions they were to be guided by the *custom* of the country relative to such transactions; and accordingly, when they wish to settle any doubt concerning them, the law of nature can refer only to such custom. But as the custom itself may, from various causes, be matter of dispute, the question respecting the contract can be decided only by litigation.

4. In cases, where the engagements which a man enters into during life, continue (as it is expedient they sometimes should do) after his death, it follows that occasionally the title to rights will depend on transactions that took place between the ancestors of the parties who respectively claim and resist such rights. Now, though the appeal to such an agreement is dictated by natural equity, as well as by municipal law, still many doubts, to which the law of nature affords no solution, may arise respecting the terms of such agreements and the credibility of the evidence by which they are to be supported; and as that which cannot be directly proved must be left to indirect presumption, the question can be decided by a lawsuit alone; where all the direct evidence will be produced, and all the indirect presumptions thoroughly examined, by an impartial court.

469 What other reason for positive regulations? Give an example.

470 What is the third reason given to account for litigation?

471 What reason is given in the fourth place?

472 How do such circumstances lead to a law-suit?

5. The quantity or extent of an injury, even when the author of it is known, is often dubious. Thus, though the law of nature cannot define the amount of injury done by an assault, or by scandal spoken or written, and consequently cannot settle the extent of reparation for such injuries, it still commands some reparation to be made; and if the sufferer and aggressor cannot agree respecting the extent of such reparation, recourse must be had to courts of law to put an end to such disagreement.

6. Written laws, from the imperfection of language or the shortsightedness of man, must be frequently ambiguous. Hence doubts arise respecting their interpretation in cases which the legislature did not foresee, or, at least, did not accurately provide for. In such cases, if the law be construed according to the letter, it will be found to be defective; if according to the spirit, it will give the judge a latitude of application fatal to liberty, by making the expounder of the law virtually its framer, and by introducing that uncertainty in the rules of adjudication which it is the very business of legislation to take away. In this dilemma, as it cannot be known beforehand what the decision will be, room is left for litigation, from which alone a satisfactory result can be obtained.

7. As the decision of a court on every *new* question is a precedent for future adjudications, not so much with reference to the decision taken by itself, as in connection with the principles on which it is founded; it is necessary for a judge to look both to and beyond the individual merits of the case, and to reflect whether the principle which he adopts can be applied equally well to any other cases which may admit of a comparison with the one before him. Without this necessity, the decision of the cause might be easy; but with it the court becomes embarrassed by doubts, which subsequent considerations, arising out of future litigation, can alone eventually solve.

Finally, after all the certainty that points which are previously doubtful can attain to, through the results of continued litigation; one principal source of legal controversy still

473 What is the fifth reason given for the frequency of lawsuits? Give an illustration.

474 What is given as the sixth reason? How are lawsuits occasioned by this circumstance?

475 What is given as the seventh reason for legal doubts?

476 How is the frequency of litigation accounted for, in the last place?



remains in the competition of opposite analogies. A doubtful point of a positive nature can seldom be mooted oftener than once. But new cases frequently arise which are similar, partly to one precedent, and partly to another; so that the analogy drawn from the principles of one decision is at variance with the analogy drawn from the principles of the other. Now, as the skill of the advocates on either side, is employed in combining analogies apparently dissimilar and separating those apparently similar; so the sagacity of the judge is seen in his detection of the fallacies of both, and in his reconciliation of conflicting principles; or, if that be impossible, in his perspicuity to see which is the weaker, and ought to yield. For instance, in the question connected with literary property, it was once argued in England, that the mental labor expended by an author on his production, is similar to the manual labor expended by an operative on his work; and that as the produce of manual labor is the property of the operative, so the produce of mental labor ought to be the property of the author; and as the operative is protected in the enjoyment of his property by rights, exclusive, assignable, and perpetual, so is the author entitled to the same protection of his property by similar rights. To this it was replied, that a book is similar to the invention of a machine or a medicine; and that as the law permits these to be copied, except where an exclusive sale is reserved by a patent to the inventor, it was fair to infer that a book, unless so reserved, may be copied likewise. The competition of these analogies constituted the difficulty of decision; and the same may be said of the majority of cases found in the Reports; although it must be confessed that the analogies there produced are sometimes so entangled as not to be easily unraveled, and so obscure as not even to be perceived.

Doubtful points of law are, however, not so numerous as they are supposed to be; and even in the few that are reserved for the decision of the judges, the uncertainty does not arise so much from the imperfection of the law, as from the means of human information.

There is one particular in the judicial constitution of this

477 What duty is devolved by this circumstance upon the judge? Give an illustration.

478 But are doubtful points of law very numerous?

479 Is there any defect in the constitution of our judiciary? What is it? Why?

country, which does not carry with it that evidence of its propriety which recommends almost every other part of the system. It is the rule which requires *unanimity* in the verdict of a jury. For, to expect twelve men to agree on a point confessedly dubious, or to suppose that, if they differ, any *real* unanimity can be the result of confining them until they all consent to the same verdict, shows more of a barbarous conceit of the dark ages, than of a policy so wise as to dictate the institution of the jury. Still, though the rule is so unreasonable, it is not often really detrimental. Indeed, in criminal prosecutions, it operates in favor of the prisoner; for if a juror must surrender his opinion to that of others, he will more readily resign it to acquit than condemn, [unless in times of high party feelings.] In civil suits, it adds weight to the direction of the judge: for when a disagreement not likely to be easily reconciled takes place amongst the jurors, they will naturally close their disputes by a common submission to the learning of the judge. On the other hand, in such forced unanimity there is less assurance of the correctness of the verdict, than if the decision were left to a plurality, or to any fixed majority of voices.

## CHAP. XIV.—CRIMES AND PUNISHMENTS.

The end of human punishment is the prevention of crime, and not the retribution of so much pain for so much guilt; although the last is the plan which perfect justice would dictate, and is, therefore, the dispensation we expect from God. In what sense, or whether in any sense justice can be said to demand the punishment of offenders, I do not now inquire. But I assert that this demand is not the *occasion* of punishment; for it is certain that the offence would not arrest the notice of the magistrate, if impunity were followed by no danger to the commonwealth. But as the impunity of an offender would lead him or others to repeat a similar offence, civil rulers have determined that human laws must inflict punishment as an example; and punishments are resorted to, only

480 Is that defect a source of much evil? Why?

481 How does it affect our opinion of the correctness of the verdicts?

482 State the proper end of human punishments.

483 Does not justice require vengeance against an offender?

484 How then do we determine that human laws do not punish offences on that account?

485 Why have civil rulers instituted punishments?

for that purpose. Now, as the severity of punishment must be regulated by the necessity for its use, and as this necessity depends on the utility of prevention; crimes are properly punished, not according to the mischief done, but to the difficulty of preventing them. Thus, the stealing of goods privately out of a shop is an act not more criminal than stealing them out of a house; yet, as the former theft is more difficult to be prevented than the latter, it should, under certain circumstances, be punished with greater severity. The crime must be prevented somehow, and consequently all necessary means are justifiable; no matter what their proportion may be to the guilt of the criminal. But as punishments are justifiable only because they are necessary, they must not be severe if milder means will answer the same purpose of prevention. Thus, the sanguinary laws against counterfeiting or clipping foreign gold coin, might be just, when prevention was difficult; but when the detection of the fraud by weighing was introduced into general usage, the prevention became easy; and the severity should now in part be done away with. On this principle may be explained, what appears to be an absurdity in the penal laws of most countries; namely, that a breach of trust is either not punished, or punished less than other frauds. Some have asked why should a violation of confidence, which increases the crime of peculation, mitigate the penalty? It may be replied, that this lenity is strictly just: for a due caution in choosing the person to be intrusted; in limiting the trust; and in demanding security; might prevent the mischief; and the law will not interpose to protect him who will not protect himself. But it will interpose, and does so with severity, where no reasonable vigilance could prevent the crime. On the same principle, the stealing of sheep or horses in fields, or of cloth from bleaching-grounds, are punished with greater severity than other felonies; not with reference to the greater moral turpitude of the acts, but be-

486 What principle of punishment do we derive from this reasoning?

487 Give an example, and account for it.

488 What opinion as to their mitigation do we derive from the same principle? Illustrate.

489 What apparent absurdity is explained upon this principle?

490 What question has been asked; and how is it answered?

491 What other instances of severity are accounted for on the same principle?

cause such necessary exposure of the property, as it makes the prevention more difficult, justifies a greater punishment. In like manner a greater punishment is justified by the difficulty of detection; as in case of the writing incendiary letters, without any or with false signatures.

But when we assert that human punishments are regulated less by the quantity of guilt, than by circumstances so varied that not only equal crimes undergo unequal punishment, but even a less crime the greater; it is natural to inquire, why different measures of justice should be expected from God on the one hand, and from man on the other? Why the rule, which befits the justice of God, should not be pursued by human laws? The answer is, that a Being, who knows the very thoughts of his creatures and whose punishments none can escape, may conduct his moral government in the wisest way by punishing crimes according to their moral turpitude alone. But when the public safety is intrusted to men necessarily so deficient in power and knowledge, that the greatest offenders often escape, or, if discovered, are from the imperfection of law only slightly punished, a different rule must be adopted; and as the certainty of punishment which exists with God, justifies one rule on his part, so the uncertainty which exists with men, will justify another rule on their part. So that instead of proportioning the punishment to the guilt, which God can do, but man cannot, the latter can only compensate for the uncertainty by severity; a rule which God, from his greater knowledge and power, need not adopt.

[“There is, besides the prevention of crime, another object to be gained by punishment, which, though subordinate to the other, might perhaps still obtain greater notice from the legislator than it is wont to do, viz. restitution or compensation.\* Since what are called criminal actions are commonly injuries committed by one man upon another, it appears to be a very obvious dictate of reason that the injury should be

492 What question arises from the preceding considerations?

493 How is the difficulty removed?

494 What may be called a third object of punishment?

495 Is it a proper object? Give some illustrations.

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\* “The law of nature commands that reparation be made.”—Paley’s *Mor. and Pol. Phil.* book 6. chap. 13. And this dictate of nature appears to have been recognised in the Mosaic law, in which compensation to the suffering party is expressly required.



repaired; that he, from whom the thief steals a purse should regain its value; that he who is injured in his person or otherwise should receive such compensation as he may. When my house is broken into, and a hundred dollars' worth of property is carried off, it is but an *imperfect* satisfaction to me that the robber will be punished. I *ought* to recover the value of my property. The magistrate in taking care of the general, should take care of the individual weal.

“If in an improved state of penal affairs it should be found practicable to oblige offenders to recompense by their labor those who had suffered by their crime, this advantage would attend,—that while it would probably involve considerable punishment, it would approve itself to the offender's mind as the demand of reason and of justice. This is no trifling consideration; for in every species of coercion and punishment, public or domestic, it is of consequence that the punished party should feel the justice and propriety of the measures which are adopted.”—*Dymond*, Essay iii. ch. 12.]

There are two methods of administering penal justice:—

1. Where the capital punishment is affixed to a few offences, and invariably inflicted :

2. Where capital punishment is affixed to many kinds of offences, but inflicted only on a few examples of each kind.

Of these methods, the last is adopted in England, where out of ten sentenced to death, scarcely one is executed. And the reason given for the adoption of this method is, that by the selection of objects for capital punishment, such circumstances may in each case be taken into consideration, as might be unknown or not so well known, before, as after conviction; and therefore, though it is necessary to fix by law the limit to which punishment may be extended, still its mitigation may be safely intrusted to the discretion of the executive magistrate, who, it is supposed, will be influenced by the view of all the circumstances that go to prove the quantity and quality of the crime. Without such a power of mitigation, some would escape who ought to suffer, and others suffer who ought to escape. For, if death were affixed

496 What improvement in penal regulations is suggested ?

497 What great recommendation has it ?

498 What are the two methods of administering penal justice ?

499 Where is the second method preferred ?

500 What reason is given for this preference ?

501 What reason is given for the power of mitigation ?

irrevocably to *few* offences only, crimes of the most heinous character might be perpetrated, which, because they are not included amongst those made capital, would escape the punishment due to their malignity; and, what is worse, would be committed because it was known they would not endanger the offender's life. On the other hand, if to reach such cases, the penal laws be *multiplied*, and then executed invariably, punishments would become more sanguinary than necessity could justify, or public feeling endure.

[In the United States, there is a near approach to the *first method*. As the editor of this work has his peculiar views on the subject of crimes and punishments, he could make no strictures on this chapter, without objecting to the whole of it; and on this account, it remains as in the original, with the exception of the omission of some passages that refer entirely to British customs.]

The prerogative of pardon is properly reserved to the chief magistrate, as being too high a privilege to be intrusted to any inferior officer. Besides, the executive can best collect advice to regulate his conduct on such occasions, and is also the least likely to be influenced to abuse the privilege. Such a power ought, however, to be exercised with discretion, and never yielded to the solicitation either of pity or of party; but it should be viewed as a judicial act, and the deliberation of the executive should be conducted with the same impartiality as the court was expected to maintain at the trial of the offender. For, whether the prisoner be guilty, and whether being guilty he ought to be executed, are equally questions of public justice; and as the conviction should depend on nothing but guilt, so the execution should depend on nothing but the intrinsic merits of the case. These reflections show that the admission of extrinsic considerations in dispensing pardon, is a crime on the part of the authors and advisers of such unmerited partiality, similar to the corruption of a judge.

The aggravations which ought to guide the magistrate in the selection of objects for punishment, are, 1. Repetition:

502 Why would this be the case if only a few offences were punished?

503 Why, if many were punished?

504 With whom should be the power of pardoning?

505 How should it be exercised? Why?

506 What aggravations should guide the magistrate?

2. Cruelty : and, 3. Combination. With regard to the first two, if ever rigor is necessary, it is so when crime has been repeated, or committed under circumstances of cruelty ; and, with respect to the third point, since numbers confer strength on offenders, there is more difficulty in defending the public against an association than against an individual ; and as this difficulty is the only justification of severity, a combination must be punished, where a single culprit might escape.

In crimes, however, which are perpetrated by many, it is proper to separate, in the punishment, the ringleader from his followers, and the person who first did the act of mischief, from those not so prominent ; not from any real difference in their guilt, but for the sake of showing the danger of taking the prominent part.

In forming a penal code, injuries effected by terror and violence are the first which demand suppression ; because, 1. Their extent is unlimited : 2. No private precaution can guard against them : and, 3. They render life as well as property insecure. These reasons will not apply to frauds which can proceed only to certain limits ; which may be prevented by circumspection, and which do not render life as well as property insecure ; and therefore, the spirit of humanity has made only crimes of violence punishable with death.

In estimating crimes of violence, regard should be had, not only to the mischief done, but to the alarm, to which the fear of such mischief and of a repetition of it, gives rise. Thus, in estimating the crime of breaking into a dwelling-house by night, we are to consider not only the loss of property stolen or even intended to be stolen, but also that universal dread of being disturbed in the silent and defenceless hours of sleep which must be felt if burglary is frequent. This circumstance occasions the difference between breaking into a house by night and by day, and hence are the different punishments for such offences in the Mosaic and most other codes of law.

507 What is said of the first two ? What of the third ?

508 What principle should be followed when crimes have been perpetrated by many ? Why ?

509 What crimes demand particular attention in penal codes ? Why ?

510 Does the same necessity apply to frauds ? Why ?

511 By what scale should crimes of violence be punished ?

512 Give an example.

Of injuries effected without force, the most noxious are, 1. Forgeries: 2. Counterfeiting or clipping coin: and, 3. Stealing letters in the course of conveyance; since all of them interfere with the conveniences of life, and interrupt commercial prosperity. And although these crimes seem at first sight to affect property alone, they do not actually end there; for if such offences become so frequent as to render the use of coin, or the circulation of bills, and the conveyance of letters, no longer safe, all trade must decline; and then as the sources of subsistence will fail, the country must become deserted; distress, arising from want of employment, would cause a depopulation, till solitude would overspread the land, and desolation stalk through untenanted cities and uncultivated fields. Since, then, such would be the ultimate consequences of these crimes, it is plain that though no living creature be immediately destroyed by them, yet they do endanger human life; and acts, which apparently effect merely the loss of property or of slight enjoyments, may eventually lay waste human existence. Hence, those who regard the Mosaic rule of 'life for life' as the only justifiable measure of capital punishment, will find a greater resemblance than they probably fancied, between crimes which affect the person and the purse; and that frauds may, in their ultimate effects, be so frightful as to merit the utmost rigor.

There seems, however, to be a substantial difference between forging bills or promissory notes, and forging legal instruments not commonly transferred from one hand to another; because, in the former case, credit is necessarily given to the signature alone, and without that credit there would be the loss of that general utility which is occasioned by the negotiation of property; while, in the latter, all possibility of deceit might be precluded by due circumspection, without any sacrifice of the general good. This distinction is sufficient to prevent acts really different from being punished, as they now are, with equal severity.

Perjury is another crime of the same class and magnitude. For since, in all matters connected with the administration of justice, on questions of life, character, or property, con-

513 What are the most noxious kinds of injuries that are effected without force? Why so?

514 Do such injuries affect nothing but property?

515 What remarks does Dr. Paley make concerning forgeries?

516 What is said of perjury? Why should it be severely punished?



fidence is necessarily reposed in an oath; the violation of that oath by an act of perjury, is fairly placed on a level with the worst of frauds, and ought to be exposed to an equal punishment.

The obtaining of money by secret threats, deserves, from the difficulty of detection and the imputations to which it may lead, a punishment proportionably severe.

The design of punishment as a preventive of crime is twofold;—reformation—and example.

1. In the *reformation* of criminals, little comparatively speaking has ever been effected. From every species of punishment hitherto invented, malefactors have generally returned only hardened in crime. There is nothing that can so much shake the soul of a confirmed villain as the dread of death; and it is probable that the horror of that situation may cause such a wrench in his feelings, as to produce, if he were reprieved at the moment of execution, such a remembrance of his situation, as might prevent his relapsing into crime. But this experiment cannot be repeated often; for if it were, it would lose its effect; as no offender would despair of receiving such a reprieve until the last moment; and the incentive to crime would consequently be increased by the increased chance of escaping the punishment most severe.

Of the reforming punishments, solitary confinement seems to promise the most success; for, when the criminal is secluded from his fellow-prisoners, among whom the worst are sure to corrupt the better; the criminal may wean himself from the love of his former precarious life, and, by reflecting on his past folly, effect a lasting alteration in his future conduct.

As half the vices of low life owe their origin to an aversion to labor, punishments ought to be so contrived as to diminish this feeling, or to subdue it entirely. To effect this object, recourse has been had to two opposite expedi-

517 What is said of obtaining money by secret threats?

518 How may punishment prevent crime?

519 Has the designed reformation been generally secured?

520 Which species of punishment might prove effectual for this purpose? But what impossibility attends it?

521 What reforming punishments are probably the best?

522 What should be one of the contrivances of punishment?

523 What has been tried for effecting this object?

ents; the one, solitary confinement with hard labor; the other, solitary confinement with nothing to do. By the former system, labor is made habitual; by the latter, idleness is rendered insupportable; and the superiority of either, depends on the question not yet decided, whether he who has been accustomed to work, or he who has been miserable from the want of it, will the most readily become industrious. But if labor be exacted, the whole or greater part of the prisoner's earning should be reserved for his use, and form a fund out of which alone he should be supported in prison; so that he may taste the advantage of industry together with the toil. And I think it would be well also if the period of his confinement should be measured, not by length of time, but by the quantity of work; with a view to excite his industry, and make it more productive to him. But still the chief difficulty remains, how to dispose of him after his liberation. Since very few will employ a person released from a jail, and still fewer will consent to work with a person so disgraced; and thus an offender is shut out of all honest employment, and compelled to resort again to crime for his support. But as it is incumbent on the state to provide maintenance for all who are willing to work, and yet absolutely necessary to separate criminals as far as possible from each other; whether some plan\* might not be adopted for the employment and dispersion of criminals, is a question left for those who are anxious to increase the happiness of all; and especially of such as would, if they could, regain their lost place in society.

No bodily punishment, however excruciating or long continued, is called *torture*, unless its object be to kill by a lingering death, or to extort the discovery of some secret from the prisoner. Although in ancient times, *the question by*

524 What does Dr. Paley recommend if the first-mentioned plan is tried?

525 What difficulty yet remains? What is said of it?

526 Is all bodily punishment called torture?

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\* The plan proposed by Paley is, that male prisoners should, when the term of their confinement had expired, be distributed in the country, detained within certain limits, and employed on the public roads; and females be remitted to the overseers of country parishes, to be there furnished with dwellings, and with the materials and implements of occupation.

*torture* was very common, its use has been wisely exploded in modern times, as well for its cruelty as inefficacy. For if the sufferer be obstinate, he will sink under it whether innocent or guilty ; or if the desire of relief from insupportable pain compel the prisoner to speak, one is as likely to say what is false against himself and others, as another is to confess the truth. It is plain that this ambiguity is fatal to the ends of justice ; and therefore its use becomes an act of gratuitous cruelty.

2. Barbarous *spectacles* of human agony are justly found fault with, as tending to destroy our sympathy with the sufferings of our fellow-creatures, and even to counteract the design of employing terror, by sinking the abhorrence of the crime in the commiseration of the criminal. But if a mode of execution could be devised, which would increase the terror of the offenders without lacerating the feelings of the spectators, it would effect, what is now wanting, an increase in the scale of punishment, especially if reserved for the most atrocious crimes. To meet this view of the case, it has been proposed to cast murderers into a den of wild beasts, where they would perish in a manner dreadful to the imagination, yet concealed from view.

Punishments called *infamous* ought to be confined to offences held in universal detestation. Such punishments may be employed with effect on offences in higher life, such as perjury or subornation of perjury, peculation, breach of trust, abuse of authority, or corruption in confidential or judicial offices ; where the more elevated the station of the criminal, the more conspicuous would be the triumph of justice.

The *certainty* of punishment is of more consequence than its severity. Persons intending to commit a crime think less of the severity of the sentence they shall undergo if detected, than of the chance of escaping altogether. Hence, a vigilant police, backed with the influence of pecuniary

527 What is said of torture ?

528 Is it proper that there should be barbarous spectacles of human agony ?

529 What farther is said of them ?

530 What is said of infamous punishments ?

531 What circumstance attending punishment is of the most importance ? Why ?

532 What does this principle teach us to be the best means for preventing crime ?

rewards to discover offenders, and an undeviating impartiality in executing the laws, will more completely suppress crime than any severity of punishment. Hence too the utility of facilitating convictions. Thus, in the case of counterfeiting coin, the crime could scarcely be checked by any severity, if the act of coining was necessary to be proved; but when the possession of implements for coining is admitted as evidence of guilt, the difficulty of conviction is removed. From an ignorance of this principle, much harm is done to society by juries; who frequently demand such proofs of guilt as the secrecy of the crime is unable to give; and are unwilling to condemn, while there exists the slightest possibility of the prisoner's innocence.

It is not, however, meant to say that juries should magnify suspicions into proofs, or weigh probabilities in *gold scales*; but if the evidence be such as would safely decide doubts on ordinary occasions, to reject it as uncertain in the case of a criminal, from the fear of shedding innocent blood, is a conduct, although natural to a mind studious of its own quiet, that it is not authorized by any considerations of rectitude or utility; as it only encourages villany by diminishing the chance of conviction.

The injudicious acquittals here complained of are defended by the maxim, that circumstantial evidence falls short of positive proof. This, as an unqualified assertion, is not true. A chain of circumstantial evidence is stronger than positive testimony taken by itself. Circumstances cannot lie; a solitary witness may: and though the former may mislead, the instances of actual deception are fewer than where the latter has been mistaken unwittingly, or has wilfully perjured himself. Besides, in a chain of circumstantial evidence, if the charge be fabricated, so many false witnesses are required, and such skill to bring the scattered rays of their evidence to a focus; while there is so little difficulty of detecting a deficient link, and so great a probability of betrayal by some slight and unforeseen inconsistency, that even the chance, much less the power, to impose on a court, is none when compared with direct proof. For that, being confined to the knowledge of a single person, and unconnected

533 What happens from an ignorance of this principle?

534 How much does Dr. Paley mean to imply here?

535 What maxim has led to injudicious acquittals?

536 Is this maxim true? Why not?



with collateral circumstances, cannot be confronted with opposing probabilities.

Another maxim has been pressed into the service, "that it is better for ten guilty persons to escape, than for one innocent man to suffer." But if by better be meant more expedient, the proposition can hardly be maintained. The security of life and property is protected chiefly by the dread of punishment; nor can the misfortune of an individual, (for so may be called the sufferings or death of an innocent person,) be placed in competition with the general good. No person ought of course to be sacrificed knowingly: but when crimes can be reached only by adopting certain rules of adjudication, and giving credence to evidence seemingly satisfactory, justice must not be deterred from following such rules and believing such evidence, through the mere chance of confounding the innocent with the guilty; and a person so suffering innocently must consider himself as a sacrifice for his country's good; since by that which occasions his sufferings, the welfare of the community is maintained and upholden.

#### CHAP. XV.—RELIGIOUS ESTABLISHMENTS AND TOLERATION.

[A national religious establishment has but few advocates in this country. In the constitution of the United States, it is declared that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." And the same spirit prevails in the respective state constitutions. But for those who wish to know Dr. Paley's opinion on this matter we subjoin his summing up of his argument.]

The result of our examination of those general tendencies, by which every interference of civil government in matters of religion ought to be tried, is this: "That a comprehensive national religion, guarded by a few articles of peace and conformity, together with a legal provision for the clergy of that religion; and with a *complete* toleration of all dissenters from the established church, without any other limi-

537 What other maxim has had a similar effect?

538 Is that maxim correct? Why?

539 In what light should an innocent sufferer be esteemed in such cases? Why?

540 Is there any prospect of a national religious establishment in the United States?

541 What is Dr. Paley's opinion relative to a national religion?

542 What does he say of tolerating dissenters?

tation or exception than what arises from the conjunction of dangerous political dispositions with certain religious tenets; appears to be, not only the most just and liberal, but the wisest and safest system which a state can adopt; inasmuch as it unites the several perfections which a religious constitution ought to aim at—liberty of conscience, with means of instruction; the progress of truth, with the peace of society; the right of private judgment, with the care of the public safety.”

## CHAP. XVI.—WAR AND MILITARY ESTABLISHMENTS.

Because the Christian Scriptures describe wars as crimes or punishments, some Christians have been led to believe that it is unlawful for them to bear arms. But they must remember that it may be necessary to the mutual benefit of individuals, for them to unite their forces and to resign themselves to the guidance of a common will; and yet that will may often be actuated by criminal motives, and directed to destructive purposes.\* Hence, though war is ascribed in Scripture to lawless and malignant passions,† and though it is numbered amongst the direst calamities of a land, yet the profession of a soldier is no where condemned. And even in the reply of John the Baptist to the soldiers, “Do violence to no man, neither accuse any man falsely, and be content with your wages,”‡ we find only a caution not to indulge in the vices of their profession; and so far from an intimation, that to gain the kingdom of God they must renounce it altogether, the very precept, “Be content with your wages,” supposes their continuance in it. Nor can we discover in the history of Cornelius,§ the first Gentile convert to Christianity, that his profession of a Roman soldier was objected

543 Why does he think such an arrangement wise and just?

544 What has been the opinion of some Christians on the subject of wars? Why?

545 What political principle does Dr. Paley propose as an argument against their suppositions?

546 Is a soldier's life condemned by Scripture?

547 What does Dr. Paley determine from the reply of John the Baptist to the soldiers?

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\* In this chapter, we shall first insert the reasonings and conclusions of Dr. Paley, and afterwards subjoin a few contrary opinions from other authors.

† James iv. 1.

‡ Luke iii. 14.

§ Acts x. 1

to, or his continuance in it considered as inconsistent with his new character ; and though little stress may be laid on the fact, still it is worthy of notice, that Christ pronounced that memorable eulogy of a Roman centurion, "I have not found so great faith, no, not in Israel."\*

It may be well to mention as a preliminary remark, that in applying the principles of morality to the affairs of a nation, a difficulty presents itself, in finding that contrary to our principles, the particular consequence sometimes appears to exceed the value of the general rule. In the transactions of individuals, no private advantage, arising from the violation of a law, can compensate the general disadvantage of such violation ; but this maxim, in the case of nations, sometimes admits of doubt. Thus, though promises between individuals ought to be kept as far as was intended by the parties, if that intention be lawful ; yet when the rigid adherence to a treaty would nearly destroy a nation, the magnitude of the particular evil leads us to doubt the obligation of the general rule. And these are doubts which moral philosophy cannot solve ; because as no rule of morality can be so rigid as not to admit of exceptions, cases of doubt must arise from the impossibility of previously comprising such exceptions within a general rule. She confesses that the obligation of every law depends upon its ultimate utility ; and that situations may possibly arise, in which the general evil is outweighed by the particular mischief. But, at the same time she recalls to the consideration of the inquirer the almost inestimable importance of fidelity, whether personal or national. For instance, she cannot help suggesting, that if treaties are to be held no longer binding than suits the convenience of either party, a general distrust will arise respecting the faith to be put in any treaty, and mankind be thus shut out from almost the only method of preventing or putting an end to war. And that although if a case presents itself, where destruction, or something like it, would be the result of a rigid adherence to a treaty, yet the happiness that

548 What from the history of Cornelius ? And the centurion ?

549 What difficulty is found in applying the principles of morality to the affairs of nations ?

550 Give an illustration.

551 What is the extent of moral philosophy on such subjects ?

552 What however does she suggest relative to treaties ?

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\* Luke, vii. 9.

can be procured to a single nation, however respectable it may be when compared with any other single nation, must bear an inconsiderable proportion to the happiness of the whole human race.

As between individuals it is impossible to ascertain every duty by an immediate reference to public utility, not only because such reference is oftentimes too remote for the direction of private consciences, but because a multitude of cases arise, in which it is indifferent to the general interest by what rule men act, though it be absolutely necessary that they act by some known rule; and as certain positive constitutions are therefore established in every society, which, when established, become as obligatory as the original principles of natural justice themselves; so, likewise, it is between independent communities. Together with those maxims of universal equity common to states and to individuals, and by which the conduct of both ought to be adjusted; there exists amongst nations a system of artificial jurisprudence, under the name of "the law of nations." In this code are found the rules, which determine the right to newly-discovered countries; those which relate to the protection of fugitives, the privileges of ambassadors, the rights of neutrality, the distance from shore to which the immunities of neutral ships extend, the distinction between free and contraband goods, and a variety of subjects of the same kind. Of these laws, and indeed of the principal part of what is called the *jus gentium*, it may be observed, that they derive their force, not from their internal justice, for many of them are arbitrary; nor yet from the authority by which they were established, for the greater part have grown insensibly into usage, without any public compact or even a known original; but simply from the general utility of conforming to some rules, where nothing but regulations previously known can prevent disputes and their destructive consequences. For instance, the sovereignty of newly-discovered countries is given to the prince or state, whose subject makes the discovery; and it is usual for the discoverer to take possession of

553 Is it always easy to ascertain duty by reference to utility?

554 Why is this the case? And how is the effect obviated?

555 What positive regulations have been adopted by independent communities?

556 What is contained in the code of the law of nations?

557 What is said of these laws?

558 Illustrate by explaining the right to newly-discovered countries.



them in the name of his sovereign at home, by displaying his flag on the desert coast. Now, nothing can be less consonant to reason, than the right which such discovery and idle ceremony confer on the country of the discoverer. Yet the claims to newly-discovered countries can hardly be settled between different nations, without some positive rule; and as such claims, if left unsettled, would prove sources of ruinous contentions, the rule proposed, however arbitrary it may be, becomes when acquiesced in, a precept of natural justice, because it is founded on general utility: and a prince, who should dispute this rule, and by such dispute disturb the tranquillity of nations, and lay the foundation of future disturbances, would be little less criminal, than he who breaks the public peace by a violation of engagements to which he had himself consented, or by an attack on those national rights which are founded immediately in the law of nature and in the first perceptions of equity.

War may be considered with a view to its causes and to its conduct.

The justifying causes of war are, deliberate invasions of right, and the necessity of maintaining such a balance of power amongst neighboring nations, as that no single state, or confederacy of states may be strong enough to overwhelm the rest. The objects of a just war are, precaution, defence, or reparation. In fact, every just war is a *defensive* war, as it supposes an injury perpetrated, attempted, or feared.

The *insufficient* causes or *unjustifiable* motives of war, are the family alliances, or the personal quarrels of princes; the internal disputes that are taking place in other nations; the extension of territory or of trade; or the weakness of a neighboring or rival state.

There are *two* lessons of rational and sober policy, which, if it were possible to inculcate them into the counsels of princes, would exclude many of the motives of war.

559 Is that principle founded in reason?

560 What would be thought of a prince who would disturb this rule?

561 Under what heads should we conduct our considerations on war?

562 What are the justifying causes of war?

563 What are the objects of a just war?

564 What is necessary to constitute a just war?

565 What are the insufficient causes of war?

566 What effect would arise from two lessons of policy that are introduced?

The first is, that the true glory of a prince consists, not in his extent of territory, but in his producing the greatest quantity of happiness in it. The enlargement of territory by conquest is not only an unjustifiable ground of war; but even, if obtained, frequently not desirable; for the larger the territory, the wider the frontier to defend; more claims to vindicate; more enemies to encounter at home and abroad; more establishments to keep up, and more taxes to pay. But if no part of the country of the victors or the vanquished be benefited, (and in such forced unions there is neither security to the one nor enjoyment to the other,) the empire can but *appear* to be enriched or strengthened, when in fact every part is poorer and weaker. Or were it true that the empire is ennobled by such exploits, the splendor of renown is purchased too dear, when the glory which is obtained by enslaving one country does not add to the happiness of the other, but rather impoverishes it. Triumphs of this kind, as they are miscalled by flattery, ought to be objects of execration rather to mankind at large, and even to the victors themselves.

There are, however, two cases where an extension of territory may be useful to both parties.

1. Where an empire reaches thereby to its natural limits. Thus the British Channel is the natural limit to England and France respectively. Hence, if France possessed any part of England, or England any part of France, the mutual recovery of what belongs naturally to both would be, not a just cause perhaps of war, but a proper use of victory.

2. Where there exist several contiguous states, too small to defend themselves individually against powerful neighbors, the purposes of confederation may be better effected by conquest than by voluntary union. Thus, the valor and fortune of an enterprising prince, who by the destruction of the heptarchy united England into one monarchy, benefited alike the victors and vanquished, by giving that strength to the whole which it wanted in its parts, and thus preventing each member of the heptarchy from becoming a prey to foreign

567 What is the first lesson?

568 How is it explained as it regards enlargement of territory?

569 What is said of any renown that may be obtained in that way?

570 What is the first case in which an empire may extend its limits? Give an example.

571 What is the other case? Give examples.

enemies. So the union of England and Scotland, which converted two quarrelsome neighbors into friends, would have been a happy conclusion to hostilities, had the event been the result of a war, and not, as it really was, of amicable convention; because it happened at a time, when, by the meeting of the two royal families of France and Spain in one race, it became no longer safe for England and Scotland to remain separate.

With the exception of these two cases, namely the obtaining of natural boundaries, and the including under the same government those who are liable to a common danger, a third can scarcely be adduced to prove that the extension of empire is useful even to the conquerors.

The second rule of political prudence, so far as it relates to war, is "never to pursue national *honor* as distinct from national *interest*."

We confess that it is often necessary to assert the honor of a nation for the sake of its interest; for concessions which betray weakness, though they may be on trifling points, invite greater demands and more serious attacks. But we say, that when points of honor are likely to lead to war, they must be estimated with reference to their utility, and not by themselves. "The dignity of his crown," "the honor of his flag," and "the glory of his arms," are very imposing terms in the mouth of a prince; but the desires they give rise to are insatiable. For in kings the pursuit of honor, unrestrained by prudence, becomes a madness; which gathering force in its progress, is checked by neither difficulties nor danger, and forgets or despises all those considerations of general tranquillity, which are the very object of the appeal to arms, and to which victory is merely instrumental. The pursuit of interest, on the other hand, is a sober principle, which computes the costs and consequences of war, and stops in time; and even, when not regulated by the universal maxims of relative justice, is much less dangerous, because more temperate, than the other.

572 Are there any other circumstances when it would be justifiable to extend an empire by conquest?

573 What is the second rule of political prudence?

574 Remarks about asserting the honor of a nation.

575 How must such points of honor be actually estimated?

576 What is said of the pursuit of honor? And of interest?

II. The conduct of war. If the cause of war be justifiable, all the means which are necessary to the end, are justifiable also. On this principle we defend those extremities to which the violence of war usually proceeds: for since the contest is by *force* between parties who acknowledge no umpire, and excludes every supposition that would limit the operation of that force, it can terminate only in the destruction of the life against which it is directed. The licence of war does not, however, authorise acts not conducing to the termination of hostilities. Hence all cruelty that serves only to exasperate the feelings without leading to the submission of the enemy, such as the slaughter or torture of captives, the demolition of public buildings, or of works fit neither for annoyance nor defence, is prohibited by the practice of civilized nations and the law of nature, as having no tendency to accomplish the object of war, and as containing that which in peace and war is equally unjustifiable,—gratuitous mischief.

Other restrictions are imposed on the conduct of the belligerents by the laws of war; which as they form a part of the law of nations, found their authority upon the same principle with the rest of that code, namely upon the fact of their being established, no matter when or by whom; and on the general utility which results from their observance. And as the regard which is paid to them must be universal or none, the whole mischief that ensues from their neglect will be justly chargeable on the party first disregarding them. For instance, by the laws of war, poison and assassination are prohibited. But if it be lawful to kill an enemy at all, it would seem by the law of nature as fair to do so by poison as by the sword; by the secret assassin as by open assault. For if it be said, that the enemy may guard himself against one species of attack but not the other, it may be answered that we have the same right to destroy the defence of a party as the party himself. Still, if we follow the violation of the international law through all its bad consequences, we shall

577 What must follow if we allow that war is justifiable ?

578 What then must we defend ? Why ?

579 How far will our defence extend ? Give examples.

580 What is said of the laws of war ?

581 Illustrate the difference between them and the laws of nature.

582 What will be our opinion after following out the effects of violating the laws of war ?



find that the mutual licence which such attempts would give for retaliation, would so fill each party with suspicion, that the calamities of war would be aggravated tenfold without necessity, and without even the slightest advantage to either side. Hence, we may fairly reprobate such expedients even by the law of nature, as so many mischievous transgressions of social laws, actually conducing to the general good.

The *two* limitations, then, by which the licence of war is confined, are, 1. Not to commit any acts of hostility, except such as lead to a speedy termination of the contest: and, 2. To respect the regulations of international law, by which the calamities of war are mitigated without impairing the power and safety of the belligerents.

Long experience seems to have taught European nations, that a standing army alone can be opposed successfully to a standing army, at least where the numbers approach at all to an equality. The first standing army after the fall of the Roman legion was formed by Charles VII. in France, in the 15th century; and the general adoption of the system by other states affords the best proof of the superiority it was considered to possess. The truth is, the closeness, regularity, and quickness of their movements; the instantaneous, and almost mechanical obedience to orders; the sense of personal honor and the familiarity with danger, which belong to a disciplined and veteran soldiery, give such firmness and intrepidity to their approach, such weight and execution to their attack, as are not to be withstood by the loose ranks of newly-levied troops, liable by their inexperience to be thrown into confusion, and in whom fear is constantly augmented by novelty and surprise. It is possible that a militia, with a great excess of numbers, and a ready supply of recruits, may sustain a defensive or a flying war against regular troops: it is also true that any service, which keeps soldiers for a while together, and inures them by degrees to action, transforms them in effect into a standing army. But on this plan almost a whole nation is required to repel an invader. Besides, a people so unprepared must always have the seat, and with it the miseries, of war at home, from their inability to carry their operations into a foreign country.

583 By what two limitations is the licence of war confined?

584 By what kind of army is a war best conducted?

585 What is said of the advantages of it?

586 What is said of a militia?

From this superiority of a standing army, it follows, that it is unsafe for a nation to disband its regular troops, while neighboring nations retain theirs.

But even on the ground of economy, a standing army ought to be kept up; as it provides the best for the public service at the smallest expense, at least, if any large force be requisite at all. For not only are low employments incompatible with the duties of a soldier, but even the profession of a soldier unfits men for other occupations. It is better that, of three peasants, one should be a soldier, and the other two remain to till the ground, than that all three should mix the business of a camp with that of a farmer; for in one case the country obtains one complete soldier, and two industrious husbandmen; but in the other it receives three raw militia-men, who are also three idle peasants. Besides, as the emergencies of war wait not for seasons, if no standing army be ready for immediate service, the reaper must leave the field in harvest, and the ploughman in seed-time; and thus the food of a whole year may perish for the want of one month's labor. A standing army is therefore more effectual and cheaper than a militia, because it possesses more power, and takes less from productive industry.

There is yet another distinction between a standing army and a militia, which is deserving attentive consideration. When the state relies, for its defence, on a militia, it is necessary that arms be put into the hands of the people at large. The militia itself must be numerous, in proportion to the inferiority of its discipline, and the defects of its constitution. Moreover, as in such a militia, they who have served a certain time are replaced by fresh draughts, a greater number will be instructed in the use of arms, and will have been occasionally embodied together, than are actually employed. Now, what are the effects of this general diffusion of the military character? It appears doubtful, whether any government can be long secure, where the people are acquainted with the use of arms, and accustomed to resort to them. Every faction will find itself at the head of an army, every disgust will excite commotion, and every commotion

587 What is the conclusion relative to standing armies?

588 Is it economical to support them? Why?

589 What other reason is there for a standing army?

590 What danger may follow from arming a militia?

become a civil war. Nothing, perhaps, can govern a nation of armed citizens but that which governs an army, despotism. I do not mean that a regular government would become despotic by training up its subjects to the exercise of arms, but that it would, ere long, be forced to give way to despotism in some other shape; and that the country would be liable to what is even worse than a settled despotism,—to perpetual revolutions, and the successive tyranny of governors, rendered cruel and jealous by the danger and instability of their situation.

The same purposes of strength and efficacy, which make a standing army necessary at all, make it necessary in mixed governments that this army should be under the direction of the prince; for, however well a popular council may be qualified for the offices of legislation, it is altogether unfit for the conduct of war; in which, success usually depends on vigor and enterprise; on secrecy, despatch, and unanimity; and a quick perception of opportunities, and the power of seizing every opportunity immediately.

It is likewise necessary that the obedience of an army be as prompt as possible; and as the most prompt obedience is that of will, the head of the government ought to possess the appointment and promotion of the officers: for a plan is most likely to be executed with zeal and fidelity, when the party who issues the order, can choose the instruments and reward their services. Besides, if in a mixed government the power to officer the army were placed in the democratic part of the constitution, it would so overbalance all regal prerogative, that little would remain of monarchy but the name, and even that, probably, would not continue long.

But all these advantages of a standing army are not unaccompanied with danger; for separated as soldiers are from their fellow-subjects, and linked to each other by habits of society, and dependent as they feel themselves to be on the head of the government, they present an aspect little favorable to public liberty.

591 What would be necessary for the government of an armed nation? Illustrate.

592 Who should have charge of the army? Why?

593 What should be the obedience of an army?

594 How can that be obtained? Why?

595 Does any danger arise from standing armies? Why?

The danger, however, may be diminished by maintaining as much alliance of interest, and as much intercourse of sentiment, between the military part of the nation and the other orders of the people, as are consistent with the discipline of an army. Hence, if the officers of the army, on whose disposition towards the commonwealth a great deal may depend, be taken from the principal families of the country, and encouraged to establish families of their own; and admitted to seats in the senate, to hereditary distinctions, and to all honors and privileges compatible with their profession, they will obtain such a share in the general rights of the people, and be so engaged on the side of public liberty, as to afford a reasonable security that they cannot be brought, by any promises of personal aggrandisement, to assist in the execution of measures to enslave their posterity, their kindred, and their country.

[The following remarks are taken from Dymond's Essay on Morality.

"It may properly be a subject of wonder, that the arguments which are brought to justify a custom such as war, receive so little investigation. It must be a studious ingenuity of mischief which could devise a practice more calamitous or horrible; and yet it is a practice of which it rarely occurs to us to inquire into the necessity, or to ask whether it cannot be, or ought not to be, avoided. In one truth, however, all will acquiesce, that the arguments in favor of such a practice should be unanswerably strong.

"It is some satisfaction to be able to give, on a question of this nature, the testimony of some great minds against the lawfulness of war, opposed, as these testimonies are, to the general prejudice and the general practice of the world. It has been observed by Beccaria, that 'it is the fate of great truths to glow only like a flash of lightning amid the dark clouds in which error has enveloped the universe;' and if our testimonies are few or transient, it matters not, so that their light be the light of truth. And there are testimonies delivered in the calm of reflection, by acute and enlightened men, which may reasonably be allowed at least so much

596 How may that danger be diminished ?

597 What principle should be followed as regards officers ?

598 When we meet with arguments in favor of war, what may be wondered at ? What remarks upon this lack of investigation ?

599 What satisfaction have we upon this subject ?



weight as to free the present inquiry from the charge of being wild or visionary. Christianity indeed needs no such auxiliaries; but if they induce an examination of her duties, a wise man will not wish them to be disregarded.

“‘They who defend war,’ says Erasmus, ‘must defend the dispositions which lead to war; *and these dispositions are absolutely forbidden by the gospel*. Since the time that Jesus Christ said, put up thy sword into its scabbard, *Christians ought not to go to war*. Christ suffered Peter to fall into an error in this matter, on purpose that, when He had put up Peter’s sword, it might remain *no longer a doubt that war was prohibited*, which, before that order, had been considered as allowable.’—‘Wickliffe seems to have thought that it was wrong to take away the life of man on any account, and that war was utterly unlawful.’\*—‘I am persuaded,’ says the Bishop of Llandaff, ‘*that when the spirit of Christianity shall exert its proper influence, war will cease throughout the whole Christian world*.’†—‘War,’ says the same acute prelate, ‘has practices and principles peculiar to itself, which but ill quadrate with the rule of moral rectitude, and are quite abhorrent from the benignity of Christianity.’ A living writer of eminence bears this remarkable testimony: ‘There is but one community of Christians in the world, and that unhappily of all communities one of the smallest, enlightened enough to understand the prohibition of war by our divine Master, in its plain, literal and undeniable sense: and conscientious enough to obey it, subduing the very instinct of nature to obedience.’”‡ Dr. Vicessimus Knox speaks in language equally specific:—‘Morality and religion forbid war, in its motives, conduct, and consequences.’

“Those who have attended to the mode in which the moral law is instituted in the expressions of the will of God, will have no difficulty in supposing that it contains no *specific* prohibition of war. Accordingly if we be asked for such a prohibition, in the manner in which *Thou shalt not kill* is directed to murder, we willingly answer that no such prohibition exists; and it is not necessary to the argument. Even

600 Repeat the testimonies of some great minds against war?

601 What is said relative to scriptural prohibition of war?

602 What answer follows from this fact?

603 Is a specific prohibition necessary? Why not?

\* Priestly.

† Life of Bishop Watson.

‡ Southey’s Hist. of Brazil.

those who would require such a prohibition are themselves satisfied respecting the obligation of many negative duties on which there has been no specific decision in the New Testament. They believe that suicide is not lawful: yet Christianity never forbade it. It can be shown, indeed, by implication and inference, that suicide could not have been allowed; and with this they are satisfied. Yet there is, probably, in the Christian Scriptures not a twentieth part of as much indirect evidence against the lawfulness of suicide, as there is against the lawfulness of war. To those who require such a command as *Thou shalt not engage in war*, it is therefore sufficient to reply, that they require that which, upon this and upon many other subjects, Christianity has not seen fit to give.

“But we ask the advocate of war, whether he discovers in the writings of the apostles or of the evangelists, any thing that indicates they approved of war. Do the tenor and spirit of their writings bear any congruity with it? Are not their spirit and tenor entirely discordant with it? We are entitled to renew the observation, that the pacific nature of the apostolic writings proves presumptively, that the writers disallowed war. That could not be allowed by them as sanctioned by Christianity which outraged all the principles that they inculcated.

“War is not often directly noticed in the writings of the apostles. When it is noticed, it is condemned, just in that way in which we should suppose any thing would be condemned that was *notoriously* opposed to the whole system, just as murder is condemned at the present day. Who can find in modern books, that murder is formally censured? We may find censures of its motives, of its circumstances, of its degrees of atrocity; but the act itself no one thinks of censuring, because *every one knows* that it is wicked. Setting statutes aside, I doubt whether, if an Otaheitan should choose to argue that Christians allow murder because he cannot find it formally prohibited in their writings, we should not be at a loss to find direct evidence against him. And it arises, perhaps, from the same causes, that a formal prohibition of war is not to be found in the writings of the apostles.

604 What reference is made to suicide?

605 What may be asked in our turn?

606 In what manner is war condemned in the Scriptures?

607 How is this illustrated by comparison with murder?

I do not believe they *imagined* that Christianity would ever be charged with allowing it. They write, as if the idea of such a charge never occurred to them. They did nevertheless virtually forbid it; unless any one shall say that they disallowed the passions which occasion war, but did not disallow war itself; that Christianity prohibits the cause, but permits the effect; which is much the same as to say, that a law which forbade the administering arsenic did not forbid poisoning.

“But it is not from general principles alone that the law of Christianity respecting war may be deduced. ‘Ye have heard that it *hath* been said, an eye for an eye, and a tooth for a tooth: but *I* say unto you, that ye resist not evil; but whosoever shall smite thee on the right cheek, turn to him the other also.’ ‘Ye have heard that it *hath* been said, Thou shalt love thy neighbor and hate thine enemy: but *I* say unto you, love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you; for if ye love them which love you, what reward have ye?’

“Of the precepts from the mount, the most obvious characteristic is greater moral excellence and superior purity. They are directed, not so immediately to the external regulation of the conduct, as to the restraint and purification of the affections. The tendency of the discourse is to attach guilt, not to action only, but also to *thought*. It has been said, ‘Thou shalt not kill; and whosoever shall kill shall be in danger of the judgment; but *I* say unto you, that whosoever is *angry* with his brother without a cause, shall be in danger of the judgment.’\* Our lawgiver attaches guilt to some of the violent feelings, such as resentment, hatred, revenge; and by doing this, we contend that he attaches guilt to war. War cannot be carried on without those passions which he prohibits. Our argument therefore is syllogistical: War cannot be allowed if that which is necessary to war is prohibited. This indeed is precisely the argument

608 How may their prohibition be shown and illustrated?

609 Repeat some texts that actually forbid war.

610 What is said of the precepts contained in the sermon on the mount?

611 In what manner does our Saviour attach guilt to war?

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\* Matt. v. 21, 22

of Erasmus :—‘ They who defend war must defend *the dispositions which lead to war ; and these dispositions are absolutely forbidden.*’

“ It is however objected, that the prohibitions ‘ resist not evil,’ &c. are figurative ; and that they do not mean that no injury is to be punished, and no outrage to be repelled. It has been asked, with complacent exultation, What would these advocates of peace say to him who struck them on the right cheek ? would they turn to him the other ? What would these patient moralists say to him who robbed them of a coat ? would they give a cloak also ? What would these philanthropists say to him who asked them to lend a hundred dollars ? would they not turn away ? This is *argumentum ad hominem* : one example among the many of that low and dishonest mode of intellectual warfare which consists in exciting the feelings, instead of convincing the understanding. It is, however, some satisfaction that the motive to the adoption of this mode of warfare is itself an indication of a bad cause ; for what honest reasoner would produce only a laugh, if he were able to produce conviction.

“ We willingly *grant* that not all the precepts from the mount were designed to be literally obeyed in the intercourse of life. But what then ? To show that their meaning is not literal, is not to show that they do not forbid war. We ask, in our turn, What *is* the meaning of the precepts ? What *is* the meaning of ‘ Resist not evil ?’ Does it mean to allow bombardment, devastation, slaughter ? If it does not mean to allow all this, it does not mean to allow war. What again do the objectors say is the meaning of ‘ love your enemies ?’ or of ‘ do good to them that hate you ?’ ‘ Does it mean ‘ ruin their commerce,’—‘ sink their fleets,’—‘ plunder their cities,’ ‘ shoot through their hearts ?’ If the precept does not mean to allow all this, it does not mean to allow war. It is therefore not at all necessary here to discuss the precise signification of some of the precepts from the mount, or to define what limits Christianity may admit in their application, since, whatever exceptions she may allow, it is manifest what she does *not* allow : for if we give to our objectors

612 What has been said of the prohibition “ Resist not evil ?”

613 What may be said of this method of treating a subject ?

614 What is granted by the opponents of war concerning such precepts ?

615 What do they ask in their turn ?



whatever license of interpretation they may desire, they cannot, without virtually rejecting the precepts, *so* interpret them as to make them allow war.

“Of the injunctions that are contrasted with ‘eye for eye, and tooth for tooth,’ the entire scope and purpose is the suppression of the violent passions, and the inculcation of forbearance, and forgiveness, and benevolence, and love. They forbid not specifically the act, but the *spirit* of war; and this method of prohibition Christ ordinarily employed. He did not often condemn the individual doctrines or customs of the age, however false, or however vicious; but he condemned the passions by which only vice could exist, and inculcated the truth which dismissed every error. And this method was undoubtedly *wise*. In the gradual alterations of human wickedness, many new species of profligacy might arise which the world had not yet practised: in the gradual vicissitudes of human error, many new fallacies might obtain, which the world had not yet held: and how were these errors and these crimes to be opposed, but by the inculcation of principles that were applicable to every crime and every error? Principles which define not always what is wrong, but which tell us what always is right.

“The narrative of the centurion who came to Jesus at Capernaum to solicit him to heal his servant has furnished one argument in favor of war. It is said that Christ found no fault with the centurion’s profession; that if he had disallowed the military character, he would have taken this opportunity of censuring it; and that, instead of such censure, he highly commended the officer, and said of him, ‘I have not found so great faith, no, not in Israel.’\*

“An obvious weakness in this argument is this; that it is founded, not upon an approval, but upon silence. Approbation is indeed expressed, but it is directed not to his arms but to his ‘faith;’ and those who will read the narrative will find that no occasion was given for noticing his profession.

616 What do they suppose is actually forbidden by those injunctions?

617 How does this method agree with that generally adopted by Christ?

618 What is said of it?

619 What is said against the argument derived from the silence of Christ concerning the profession of the centurion?

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\* Matt. viii. 10.

He came to Christ not as a military officer, but simply as a deserving man. A censure of his profession *might*, undoubtedly, have been pronounced, but it would have been a gratuitous censure, a censure that did not naturally arise out of the case.

“But how happens it that Christ did not notice the centurion’s religion? He was surely an idolater. And is there not as good reason for maintaining that Christ approved idolatry because he did not condemn it, as that he approved war because he did not condemn it? Reasoning from analogy, we should conclude that idolatry was likely to have been noticed rather than war: and it is therefore peculiarly and singularly unapt to bring forward the silence respecting war, as an evidence of its lawfulness.

“A similar argument is advanced from the case of Cornelius, to whom Peter was sent from Joppa; of which it is said, that although the gospel was imparted to Cornelius by the especial direction of heaven, yet we do not find that he therefore quitted his profession, or that it was considered inconsistent with his new character. The objection applies to this argument as to the last, that it is built upon silence; that it is simply negative. *We do not find* that he quitted the service: I might answer, neither do we find that he continued in it. We only know nothing of the matter: and the evidence is therefore so much less than proof, as silence is less than approbation.

“It has been said, again, that when soldiers came to John the Baptist to inquire of him what they should do, he did not direct them to leave the service, but to be content with their wages. This, also, is at best but a negative evidence. It does not prove that the military profession was wrong, and it certainly does not prove that it was right. But, in truth, if it asserted the latter, Christians have, as I conceive, nothing to do with it: for I think that we need not inquire what John allowed, or what he forbade. He confessedly be-

620 What other argument against supposing this silence to be an evidence of the lawfulness of war?

621 What is said of the argument derived from the case of Cornelius?

622 What is said of the fact that John did not direct the soldiers to leave their profession?

623 Suppose that it proved the profession was lawful to them at that time?

longed to that system which required ‘an eye for an eye, and a tooth for a tooth.’ And although it could be proved (which it cannot be) that he allowed wars, he acted not inconsistently with his own dispensation; and with that dispensation we have no business. Yet, if any one still insists upon the authority of John, I would refer him for an answer to Christ himself. What authority *He* attached to John on questions relating to His own dispensation may be learned from this, ‘The *least* in the kingdom of heaven is *greater* than he.’ ”

“The opinions of the earliest professors of Christianity upon the lawfulness of war are of importance, because they who lived nearest to the time of its founder were the most likely to be informed of his intentions and his will, and to practice them without those adulterations which we know have been introduced by the lapse of ages.

“During a considerable period after the death of Christ, it is certain, then, that his followers believed he had forbidden war; and that, in consequence of this belief, many of them refused to engage in it whatever were the consequence, whether reproach, or imprisonment, or death. These facts are indisputable: ‘It is as easie,’ says a learned writer of the seventeenth century, ‘to obscure the sun at mid-day, as to deny that the primitive Christians renounced all revenge and war.’ Christ and his apostles delivered general precepts for the regulation of our conduct. It was necessary for their successors to apply them to their practice in life. And to what did they apply the pacific precepts which had been delivered? They applied them to war: they were assured that the precepts absolutely forbade it. This belief they derived from those very precepts on which we have insisted: they referred expressly to the same passages in the New Testament, *and from the authority and obligation of those passages*, they refused to bear arms. A few examples from their history will show with what undoubting confidence they believed in the unlawfulness of war, and how much they were willing to suffer in the cause of peace.

624 What is said of John’s ministerial character?

625 Why will the opinions of the primitive Christians be of any consequence?

626 What do we know concerning their opinions?

627 How is it said that they imbibed such notions?

“ Maximilian, as it is related in the acts of Ruinart, was brought before the tribunal to be enrolled as a soldier. On the proconsul’s asking his name, Maximilian replied, ‘ I am a Christian, and cannot fight.’ It was however ordered that he should be enrolled, but he refused to serve, still alleging *that he was a Christian*. He was immediately told that there was no alternative between bearing arms and being put to death. But his fidelity was not to be shaken: ‘ I cannot fight,’ said he, ‘ if I die.’ He continued steadfast to his principles, and was consigned to the executioner.

“ The primitive Christians not only refused to be enlisted in the army, but when they embraced Christianity while already enlisted, they abandoned the profession at whatever cost. Marcellus was a centurion in the legion called Trajana. While holding this commission he became a Christian; and believing in common with his fellow Christians, that war was no longer permitted to him, he threw down his belt at the head of his legion, declaring that he had become a Christian, and that he would serve no longer. He was committed to prison; but he was still faithful to Christianity. ‘ It is not lawful,’ said he, ‘ for a Christian to bear arms for any earthly consideration:’ and he was in consequence put to death. Almost immediately afterward, Cassian, who was notary to the same legion, gave up his office. He steadfastly maintained the sentiments of Marcellus, and like him was consigned to the executioner. Martin, of whom so much is said by Sulpicius Severus, was bred to the profession of arms, which, on his acceptance of Christianity, he abandoned. To Julian the apostate, the only reason that we find he gave for his conduct was this: ‘ I am a Christian, and therefore I cannot fight.’

“ These were not the sentiments, and this was not the conduct, of isolated individuals, who might be actuated by individual opinion, or by their private interpretations of the duties of Christianity. Their principles were the principles of the body. They were recognised and defended by the Christian writers their contemporaries. Justin Martyr and Tatian talk of soldiers and Christians as distinct characters; and Tatian says, that the Christians declined even military com-

629 Mention the example of Maximilian.

629 Give some other examples.

630 Were these sentiments general among the primitive Christians?

631 What authority have we for believing so?



mands. Clemens of Alexandria calls his Christian contemporaries the ‘followers of peace;’ and expressly tells us that the ‘followers of peace used none of the implements of war.’ Lactantius, another early Christian, says expressly, ‘It can *never* be lawful for a righteous man to go to war.’ About the end of the second century, Celsus, one of the opponents of Christianity, charged the Christians *with refusing to bear arms even in case of necessity*. Origen, the defender of the Christians, does not think of denying the fact; he admits the refusal, and justifies it, *because war was unlawful*. Even after Christianity had spread over almost the whole of the known world, Tertullian, in speaking of a part of the Roman armies, including more than one third of the standing legions of Rome, distinctly informs us that ‘not a Christian could be found among them.’

“If it be possible, a still stronger evidence of the primitive belief is contained in the circumstance, that some of the Christian authors *declared that the refusal of the Christians to bear arms* was a fulfilment of ancient prophecy. The peculiar strength of this evidence consists in this, that the fact of a refusal to bear arms is assumed as notorious and unquestioned. Irenæus, who lived about the year 180, affirms that the prophecy of Isaiah, which declared that men should turn their swords into ploughshares, and their spears into pruninghooks, *had been fulfilled in his time*; ‘for the Christians,’ says he, ‘have changed their swords and their lances into instruments of peace, and *they know not how to fight*.’ Justin Martyr, his contemporary, writes, ‘That the prophecy is fulfilled you have good reason to believe, for we, who in times past killed one another, *do not now fight with our enemies*.’ Tertullian, who lived later, says, ‘You must confess that the prophecy has been accomplished, as far as *the practice of every individual is concerned* to whom it is applicable.’

“It is therefore indisputable, that the Christians who lived nearest to the time of our Saviour, believed with undoubting confidence, that he had unequivocally forbidden war; that they openly avowed this belief; and that, in support of it, they were willing to sacrifice, and did sacrifice, their fortunes and their lives.

632 What is said of their appeal to prophecy?

633 What is our general conclusion relative to the first Christians?

“It is common with those who justify defensive war to identify the question with that of individual self-defence; but the questions are practically dissimilar; so that if we had a right to kill a man in self-defence, very few wars would be shown to be lawful. Of the wars which are prosecuted, some are simply wars of aggression; some are for the maintenance of a balance of power; some are in assertion of technical rights; and some undoubtedly to repel invasion. The last are perhaps the fewest; and of these only it can be said that they bear any analogy whatever to the case which is supposed; and even in these the analogy is seldom complete. It has rarely indeed happened that wars have been undertaken simply for the preservation of life, and that no other alternative has remained to a people than to kill or to be killed. And let it be remembered, that *unless this alternative alone remains*, the case of individual self-defence is irrelevant: it applies not, practically, to the subject.

“But indeed you cannot in practice make distinctions, even moderately accurate, between defensive war and war for other purposes. What is the testimony of experience? When nations are mutually exasperated, and armies are levied, and battles are fought, does not every one know that with whatever motives of defence one party may have begun the contest, both, in turn, become aggressors? In the fury of slaughter, soldiers do not attend, they cannot attend, to questions of aggression. Their business is destruction, and their business they will perform. If the army of defence obtains success, it soon becomes an army of aggression. Having repelled the invader, it begins to punish him. If a war has once begun, it is vain to think of distinctions of aggressions and defence. Moralists may *talk* of distinctions, but soldiers will *make* none; and none can be made; it is without the limits of possibility.

“Indeed, some of the definitions of defensive or of *just* war which are proposed by moralists, indicate how impossible it is to confine warfare within any assignable limits. ‘The objects of *just* war,’ says Paley, ‘are precaution, defence

634 On what principle do some justify defensive war?

635 Are the questions of defensive war and self defence the same?

636 For what purpose are wars generally prosecuted?

637 What is necessary to make the questions of defensive war and self defence similar?

638 What is the voice of experience on this subject?

or reparation.'—'Every *just* war supposes an injury perpetrated, attempted, or feared.'

"I shall acknowledge, that if these be justifying motives to war, I see very little purpose in talking of morality upon the subject. It is in vain to expatiate on moral obligations, if we are at liberty to declare war whenever an 'injury is feared;' an injury, without limit to its insignificance! a fear, without stipulation for its reasonableness! The judges, also, of the reasonableness of fear, are to be they who are under its influence; and who so likely to judge amiss as those who are afraid? Sounder philosophy than this has told us, that 'he who has to reason upon his duty when the temptation to transgress it is before him, is almost sure to reason himself into an error.'

"If these are the proper standards of just war, there will be little difficulty in proving any war to be just, except indeed that of simple aggression; and by the rules of this morality, the aggressor is difficult of discovery; for he whom we choose to 'fear,' may say that he had previous 'fear' of us, and that his 'fear' prompted the hostile symptoms which made us 'fear' again. The truth is that to attempt to make any distinctions upon the subject is vain. War must be wholly forbidden, or allowed without restriction to defence; for no definitions of lawful and unlawful war will be, or can be attended to. If the principles of Christianity, in any case, or for any purpose, allow armies to meet and to slaughter one another, her principles will never conduct us to the period which prophecy has assured us they shall produce. There is no hope of an eradication of war but by an absolute and total abandonment of it."—*Dymond's Principles of Morality*. Essay iii. chap. 19

639 What does Mr. Dymond say of Dr. Paley's definition of defensive or just war?

640 What would be the effect of making these definitions the standard of just war?

641 What is Dymond's conclusion relative to war of any kind?

THE END.





Page 2













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